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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 962

MARTIN M. GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 963

JACOB P. SHULMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 980

THEODORE GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED APRIL 18, 1941.
APRIL 18, 1941.
APRIL 23, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.

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Q. Incidentally, did you make a memorandum of the time that you were down to the store? A. The time we were down there we took inventory. 1585

Q. What kind of an inventory did you make? A. Well, I mean just going through the boxes, guessing more or less.

Q. And did you jot these guesses down? A. Yes, sir.

Q. And did you charge Mr. Zuckerman for anything? A. No.

Q. You didn't? A. No.

Q. Do you know a man by the name of Nicholas Kalmeyer? A. Nick Kalmeyer?

Q. Yes. Do you know him? A. Yes.

Q. You know he was down making an appraisal for Zuckerman's partner, Mr. Schwartz, about the same time you went there? A. I just heard of it. 1586

Q. You never heard that before, did you? A. No, sir.

Mr. Walsh: That is all.

Mr. Fielding: That is all.

(Witness excused.)

The Court: Is that all you have?

Mr. Fielding: That is all.

The Court: Very well. I wonder if we can convene tomorrow morning at 10 o'clock? 1587

Mr. Fielding: As far as I am concerned, that is all right.

The Court: I hate to ask you to do that, ladies and gentlemen, but as I have made these appointments, and while I will take all the time to try a lawsuit to be required—I am not trying to rush anybody through anything, but I do want to conserve as much time by meeting earlier and running a little later, if we can.

Thank you very much. You will be excused until tomorrow morning at 10 o'clock.

(Adjourned to July 23, 1940, at 10:00 A. M.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 23, 1940;
10:00 A. M.

TRIAL RESUMED.

(The following proceedings were had without the presence of the jury:)

The Court: Very well, gentlemen. I have read this entire record and I have reached the same conclusion that I announced yesterday, and that is that there is not sufficient evidence to let it go to the jury as to the defendant Kandell. I have read also the brief left with me by the Government this morning and the excerpts from the authorities quoted therein, and I state that I already had that idea with reference to what the law is. When a conspiracy is once established it takes just slight evidence to connect any other defendant with it but the law is well established that before any statements of the conspiracy are admissible there must be some evidence of the guilty knowledge. Every act that has been done by the defendant Kandell is just as consistent with innocence as it is with guilt, when you eliminate the hearsay statements or, rather, the ex parte statements insofar as he is concerned of the co-defendents.

You might say that possibly the evidence is sufficient to say that he is really guilty. You might say that the circumstances raise a very strong suspicion that he must have had some guilty knowledge of it but of course it is very settled that you can't convict a man upon conjecture and suspicion, and there must be some positive evidence or some circumstances in-

dicating possibly his connection with it. I read the entire record there with reference to what happened at the meeting when the $10 was discussed. That testimony is very vague as to what actually happened. The witness Hoffman testified that after the meeting, that he and Goldman and some other one remained there, did not bring in Kandell. Then it was that the Court asked if Kandell was at that meeting and he said "Yes." Then further on—either further on or prior thereto, I don't recall which—he had testified that the only discussion about the $10 was had at that general creditors' meeting when they first assembled there, and that is the strongest circumstance connecting Kandell with it. It may be if they are guilty that Kandell is as guilty as any of them, but the evidence, in my opinion, is not sufficient to sustain a verdict against him, and if he were to rest now and if I were representing him, that is what I would do, if the motion should be availed of, but as the Court I have no thought or right to gamble or require the defendant to gamble when the Court was not in doubt about it. 1591 1592

Frequently I reserve ruling upon a motion like this until the conclusion of the testimony because my mind is not definite, and when it is not definite in this case, why, when I think I should reserve ruling, but when my mind is definite, that there isn't sufficient evidence here connecting him, then I follow the rulings and make the decisions on them. 1593

So as to Kandell, I will sustain the motion as to him, I will adhere to my ruling and discharge him. I will let it go to the jury on the others.

Let the jury come in.

(The jury entered the courtroom.)

The Court: Very well. Ladies and gentlemen, I

1594 might say that I have sustained a motion to exclude the evidence as to Kandell and discharge him. He is no longer in the case.

JACK MICHAELS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Michaels, where do you live? A. 2477 East 21st Street, Brooklyn.

Q. And what is your business? A. Cash buyer.

1595 Q. Of what? A. General merchandise.

Q. That includes? A. General dry goods.

Q. Furnishings and dry goods? And things of that type? A. Yes.

Q. What were you doing in 1937? A. In the same line of business.

Q. How long were you engaged in that business? A. In this business since 1917.

Q. Did you in April of 1937 visit what is known as the Army & Navy store at 346, I think it is, Bowery? A. Right; yes, sir.

Q. At whose request did you make that visit? A. I

1596 went through the stock—

Q. At whose request did you go there? A. At whose request? I was asked by a fellow by the name of Kreiselman from Orchard Street—a jobber of Orchard Street, New York City.

Q. And as a result of that request you went there? A. Yes, sir.

Q. Did you appraise the merchandise? A. I just looked it through, according to my knowledge.

Q. What were you prepared to bid for it? A. From 1000 to $1050.

Q. Not any higher? A. No, sir.

Q. Were you asked if you wouldn't raise your bid over 1597
that $1000? A. Subject if I could get the store for ten days to dispose of it on the premises, it would be worth another $50 instead of the removing expenses but I was not asked for it.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. How long did you say you were in the cash buying business? A. 1918—1917.

Q. Did you go down with anybody on that day when you examined the goods? A. I was with my partner, 1598
Mr. Stringer.

Q. Mr. Stringer? A. Abraham Stringer.

Q. He testified yesterday. A. Yes.

Q. Do you remember—was he working in conjunction with you? A. Mr. Stringer?

Q. Yes. A. Well, we are partners.

Q. Well, I understand that, but did he go down with you just to assist you? A. He went down with me just to assist me, yes.

Q. And will you tell the Court and jury what type of an inventory you made and how long it took you? A. 1599
It took me about 20 minutes.

Q. 20 minutes? A. That is all.

Q. How big is that store? A. That store is—say, about 15 foot front, if I am not mistaken—15 or 18; a small store, a small size of a store.

Q. And you went down, you said, at the request of Mr. Kreiselman? A. Mr. Kreiselman.

Q. Kreiselman. A. Kreiselman and Schulman. I was recommended by Schulman to Kreiselman, he should call me to look through the stock and get a bid on it.

Q. Wait till I get that straight. You said that Mr. Schulman called you up first? A. Mr. Schulman called

1600 up Kreiselman to call me to go through the stock and put a bid on it.

Q. How do you know that? A. Mr. Kreiselman called me up and asked me to come down and put a bid by the request of Mr. Schulman on it.

Q. And how long have you known Mr. Schulman? A. Schulman? About seven or eight years I guess.

Q. Have you ever done business with him or for him before? A. I don't—maybe once or twice through the creditors.

Q. Through creditors, you say? A. Yes.

Q. In insolvency proceedings? A. No, on bulk sales.

1601 Q. In bulk sales? A. Right.

Q. Did you make an inventory or did you appraise the goods for the purpose of a bulk sale? A. Well, I appraised the goods, to put a bid in, but whatever they will do, bulk sale or assignment or anything, that was a further question, but it didn't go that far.

Q. And how many appraisals do you make a year, sir? A. Well, mostly we buy our own stock—once about ten or twelve appraisals—not appraisals for lawyers, but we are doing the appraisals for our ownself, to try and buy the stocks through the lawyers under the Bulk Sales Act.

1602 Q. Do you remember the date when you went down to the place on the Bowery—what was the address, did you say? A. Bowery, corner Spring. I couldn't give you exactly the number.

Q. Who owned the store, do you remember? A. A fellow that went to jail on account of a certain—

Q. What was his name? A. I couldn't tell you.

Q. Don't remember that? A. No.

Q. That was three and a half years ago? A. It was around sometimes in the spring of 1937.

Q. Was that after April? A. It was either the early part of April or late in March.

Q. Did you know that particular store had gone into bankruptcy at that time? A. I did not. 1603

Q. Well, do you know that the only person that can buy when an estate is in bankruptcy or who can sell it, is the Underwriters' Salvage Corporation? A. I do.

Q. You know that? A. I do.

Q. Did you know that this store was in bankruptcy, or this particular business was in bankruptcy at that particular time? A. I did not.

Q. Well, if you had known that, your visit there would have been foolish? A. No, it would be just the same because many of the stores are sold in the court before the referee before being given to the underwriter. 1604

Q. As a matter of fact, Mr. Michaels, how do you remember the amount? A. It just happened this was a case that I remembered the amount for a reason.

Q. What was the reason? A. We were trying to buy the store for a retail, being that it had a black mark on it on account of the fellow going to jail, so we were interested only for forced liquidation.

Q. That's the way you remember this particular thing? A. Right.

Q. Did you make any notations? A. No notations at all.

Q. You just carried that price in your head for three and a half years? A. Not carrying only, but we know exactly—we go through a stock, if we get it or we don't get it, if we come to a place we want to know—know what the stock is worth. 1605

Q. Did you speak to Mr. Schulman before you testified? A. When?

Q. At any time. A. Well, Mr. Schulman was over a couple of months ago, that I gave him a statement of it.

Q. Did you give him a statement? A. Yes.

Q. Have you got a copy of that statement here? A. I haven't got it with me.

1606 Q. What did you say in that statement? A. Whatever I put a bid on it and whatever it was there.

Q. And was it at that time that you recalled that the price was $1050—A. Right.

Q. —when Mr. Schulman spoke to you? A. Right.

Q. You weren't in the courtroom yesterday when Mr. Stringer was here, were you? A. No, sir.

Q. But you are absolutely definite and sure, are you; that it was Mr. Kreiselman that sent you and Stringer down there? A. Mr. Kreiselman called me and I took Mr. Stringer with me and we went down to look at it.

Q. It wasn't Schwartz, you are absolutely positive? A. 1607 Absolutely positive.

Q. It wasn't Schwartz that sent you and Stringer down there? A. No.

Q. You are positive of that? A. Positive not.

Q. And you are positive that it wasn't Zuckerman? A. Positive not.

Q. Do you know how much Kreiselman had as his claim against this estate at that time? A. I didn't ask him because we are not interested in this here method. We are only interested when we are called upon to make the bids.

Q. Did you know anything about—that was $1050, was 1608 solely for the stock in that store at that time? A. Yes, right.

Q. Was it in pretty good condition? A. The stock was in pretty good condition.

Q. There wasn't any stock there that was 20 or 10 years old, was there? A. We didn't look into that—

Q. Well, it was in fairly decent shape, was it? A. The stock was in fairly decent shape because it was work clothes on the shelves.

Q. As a matter of fact, in April if you had disposed of that stock you could have disposed of it immediately

because there was a lot of summer stuff there? A. It don't make any difference because we take them according to time. 1609

Q. You take them according to what? A. We take them inventory according to what time. If it is spring time we take the winter goods at a lower basis and dispose of at forced liquidation.

Q. Do you know what "line" means? A. Line?

Q. Line—l-i-n-e. A. Yes, sir.

Q. What does it mean? A. That is, it means, you know, $50 means a line.

Q. Well, for instance, what would be a five line? A. $250. 1610

Q. Or $2500 or $25,000? A. Well, that's a question, a big line or a small line.

Q. That's what I mean, but it means one-half of what you say. Five line means $250? A. Yes.

Q. Or it might mean $25? A. No.

Q. Could it mean $2500? A. A big line.

Q. Yes. That is what I say. A. We say not a five line but a 50 line.

Q. 50 line? A. Yes. $2500 is a 50 line.

Q. In this price that you quoted—and to whom did you quote this price, Mr. Schulman or Mr. Kreiselman? A. Mr. Kreiselman, if I am not mistaken, because we were 1611 three fellows in the store at that time.

Q. Who was in the store? A. I was there, Mr. Stringer and a fellow by the name—a representative of Morris Amit's office, from Grand Street—Bauman, and if I am not mistaken, Mr. Bauman was called by Mr. Zuckerman.

Q. By Mrs. Zuckerman? A. Mr. Zuckerman—Mr. Bauman.

Q. Did you know anything about $300 relief vouchers that were also in the estate? A. Not at all.

Q. You never heard of that? A. No.

1612 Q. So that wasn't included in your price of $1050? A. No, sir.

Q. And at that time you made absolutely no memo of the price; you just remembered it at that time after Mr. Schulman called it to your mind when he saw you a couple of months ago; is that your testimony, sir? A. Well, I—

Mr. Fielding: I object. He did not testify to that.

Mr. Walsh: That is what he just testified to, if your Honor please.

1613 The Court: I will overrule the objection and let him answer as to whether or not he testified to that.

Q. Isn't that when you remembered the price was $1050? A. Well, that was the price to pay for the stock and that is what I told Mr. Schulman on.

Q. Did Mr. Kreiselman tell you why he wanted an appraisal? A. No, just wants to know the bid on the stock, what it's worth, and he will give it to the creditors. He was one of the creditors' committee.

Q. Did Mr. Stringer also give an affidavit to Mr.—A.

1614 No, sir.

Q. —Schulman? A. No, sir.

Q. Well, Mr. Stringer testified yesterday that Mr. Schwartz sent him down.

Mr. Fielding: I will object to that question.

A. I will correct that—

The Court: I will sustain the objection.

Mr. Walsh: I will withdraw the question.

The Witness: I will correct that. Mr. Stringer—

Q. Never mind that. His Honor has sustained the ob-

jection. You don't have to offer any explanation. You said you were ready to offer $50 more if you could stay in the store for the purpose of disposing of it? A. I did not offer—there was no means of disposing of as long as there was a black mark on it. 1615

Q. Who knew it had a black mark on it? A. Because the man—

Q. Who knew—

Mr. Fielding: Please let the witness answer and do not interrupt him.

The Court: Yes, let him answer that.

Q. (Read.) A. We were told by Mr. Kreiselman that this party cashed certain checks which he went to jail for it, and we could not take the store on account of this black mark, to retail it, to dispose of it on the premises. 1616

Q. Well, the goods, the merchandise—did not know that there was a black mark on it? A. We don't use dummies. We use people of the street.

Q. Well, they did not know there was a black mark on the goods? A. As far as the goods are concerned—

Q. The price of the goods was the same, the same whether he committed a murder; isn't that so? A. What murder? The goods did not know no murder at all. 1617

Q. That is what I say. The people who were buying the goods did not know whether he went to jail or not; the intrinsic value of the goods was the same, no matter what he did? A. No. It's a question of whether the people would come in the store.

Mr. Walsh: That is all.

Mr. Corbin: What was the last answer, please.

(Answer read.)

1618 Redirect examination by Mr. Corbin:

Q. You did sign a paper as you told Mr. Walsh; you signed a paper? A. Yes.

Q. I show you a paper and ask you if it is the one you were asked about and if it is the one that you signed (handing to witness)? A. Right.

Mr. Corbin: Now, Mr. Walsh, I hand you this paper. We want you to have everything that our witnesses signed.

Mr. Walsh: Are you introducing it in evidence, sir?

1619 Mr. Corbin: I leave it to you to do what you will with it.

The Court: Very well, gentlemen. Any further questions from this witness?

Mr. Corbin: No, sir.

The Court: Stand aside.

Mr. Walsh: Just a question, if your Honor please.

The Court: All right.

Recross examination by Mr. Walsh:

Q. Is this your handwriting (handing to witness)? A. No. It is my signature on it.

1620

Q. Whose handwriting is it? A. This handwriting, somebody in the store wrote it out.

Q. Who? A. I couldn't tell you.

Q. Well, did you see him write it out? A. (No answer.)

Q. Is it Schulman's writing? A. It is.

Q. What? A. It is.

Q. It is Schulman's writing? A. (No answer.)

Q. Is that correct? A. Right.

Q. And he says "In April, 1937"—this is your signature; there is no question of that (indicating)? A. My signature.

Q. And this is your stationary? A. My stationary.

Q. And Schulman wrote the body of it and you just signed it, isn't that correct? A. Yes, giving him the statement. 1621

Q. Now in this statement—did you dictate the statement to Mr. Schulman? He just wrote it and you just signed it? A. I just answered him the questions, whatever he asked me and he wrote it out.

Q. Well, he says here, "In April, 1937, I was called up by Jacob Schulman to appraise and bid on an army and navy stock on the Bowery."

I thought you just said that Kreiselman called you up. A. Kreiselman called me, not Schulman.

Q. Well, Schulman wrote it himself that he was the one who called you up. A. Well, Mr. Kreiselman called me but I am giving you the statement what happened. Schulman called Kreiselman and Kreiselman called me. 1622

Q. Now which is correct? A. Kreiselman called me, recommended by Mr. Schulman.

Q. Well, did Kreiselman call you up and ask you to appraise the stock? A. Well, whichever he called the first, and I wasn't there.

Q. Well, is this correct—read that over. A. Yes, I read it. I see.

Q. What is the date of it? A. On May 28th, 1940.

Q. That is not so long ago? A. No. 1623

Q. Well, read it over and tell me if it is correct. A. Well, this is not correctly that Schulman called my office, but Kreiselman called.

Q. Were you trying to fool the Court and the jury when you said a few moments ago that it was somebody in your store that read that? A. I was trying to fool the jury in what way? It just happened that I misplaced my memory who wrote it.

Q. But was only in May, that is only a couple of months ago. A. Right.

1624 Q. And you couldn't remember then who wrote that piece of paper? A. I couldn't remember for the minute who wrote that paper.

Q. And yet you can remember the price in 1937? A. Positive, 100 per cent.

Q. Huh? A. I can remember the price of many stocks outside of this one.

Q. Do you remember saying this: "I went to that store, examined the stock and fixtures, told Mr. Schulman that we would pay $1000 top"? Do you remember that statement? A. Right.

Q. Now which is right, the $1000 top or the $1,050? A.
1625 Up to $1050—$1000.

Q. So this statement isn't correct? A. Well, this was given to Schulman, this statement, after we went through it because as I have said—

Q. After you went through what? A. To pay a thousand dollars for it.

Q. Well, you told on direct—A. But my partner decided we could get the stock up to $1050, we would go $1050.

Q. But you did not say that then? A. I didn't have to say that then but as far as Mr. Schulman is concerned he had the offer of one thousand. Discussing with my partner
1626 we decided if we could get the stock for about $1050 we will take it.

Q. Let me read to you further: "Mr. Schulman tried to have us give a higher offer but we told him that it was not worth more than $1000 and that we could not go higher." Do you remember writing that and signing your name to that? A. Right.

Q. Have you any explanation that you want to give, that you couldn't give them more than a thousand dollars? A. I wouldn't go over $1000. My partner consented that he would go another $50.

Q. Well, you testified that you had offered $1050, didn't

you?. A. We offered to Mr. Kreiselman if we could get it up to $1050 we will take it—not take that. 162

Q. Well, you said right here that the $1000 was the top offer. A. That is the top offer given at that time to Mr. Schulman.

Mr. Walsh: Thank you very much, Mr. Corbin, for that piece of paper.

That is all.

Mr. Corbin: Then I offer it in evidence.

Mr. Walsh: I have no objection.

(Marked Defendants' Exhibit C.)

Mr. Walsh: May I read it to the jury now, if your Honor please? 162

The Court: Yes.

(Mr. Walsh reads Defendants' Exhibit C to jury.)

Mr. Walsh: That is all. Thank you, Mr. Michaels.

By Mr. Fielding:

Q. Then when you and Stringer went down to the store there was somebody there representing Zuckerman, is that right? A. Right.

Q. That was a Mr. Bauman? A. Right. 162

Mr. Fielding: That is all.

The Court: Stand aside.

(Witness excused.)

The Court: Very Well. I will recess this court for ten minutes. The jury may be excused for ten minutes.

(SHORT RECESS.)

The Court: Very well. Who is next?

Mr. Fielding: Mr. Schulman.

Mr. Corbin: Judge, last week we subpoenaed a witness by the name of Sam Rich, and he was here.

1630 pursuant to that subpoena, one day and I think also the following day. Now he was here yesterday morning, and it came to our ears that he left saying "I will see you next week." So we served a new subpoena on him last night at his home. He came in this morning at ten o'clock and immediately left. I don't see him here now. May I have his name called?

The Court: Yes. Let Sam Rich be called.

The Clerk: Is Sam Rich in the courtroom?

(No response.)

The Court: Do you want an attachment for him?

1631 Mr. Corbin: What he said is "I am going out for a cup of coffee." I am afraid he is gone.

The Court: Well, I will give you an attachment now or I will call him later and give you an attachment later. The only thing is I do not want to delay the trial of the case.

Mr. Corbin: I won't ask that, Judge, but I thought I would call it to your attention.

Supposing we let it go for the time being and I will see if he comes back.

The Court: Yes, very well.

1632 JACOB P. SCHULMAN, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Schulman, where do you live? A. 218 Beach 131st Street, Rockaway Beach, New York.

Q. And with whom do you live? A. My wife and three children.

Q. What is your profession or occupation? A. A lawyer since November, 1935.

Q. Admitted to the bar of this court? A. I am.

Q. And of the bar of the State of New York? A. I am. 1633

Q. And have you practiced in all of the courts of New York in this State? A. Yes, sir.

Q. And also in this jurisdiction? A. Yes, sir.

Q. Going back to April, 1937, what was your first knowledge or information concerning the matter of Hymowitz?

Mr. Walsh: I object to the question, if your Honor pleases.

The Court: I will overrule the objection.

Mr. Walsh: May I be heard on that for a moment, if your Honor please? He premised his remarks with "April"—"What was the first time you 1634 heard of it."

The Court: I will overrule the objection. He may say when he first heard of it.

A. The first time I heard of the Hymowitz case at any time was about April 3rd, or the day before—the Saturday, which I think was April 3—April 2, 1937.

Q. Well, what was your first information about it? A. I first called by Mr. Schwartz of Schwartz & Zuckerman, a client of mine, who has been, and still is a client of mine for the past ten or twelve years, and he told me this, that about four or five days before there was a meeting of 1635 creditors of this Paul Hymowitz at the office of the Dry Goods and Furnishings Association; that at that time there was a lawyer by the name of Hoffman who was representing the debtor and he told creditors that he wanted to go through with the assignment and he said that creditors would get a substantial dividend through the assignment proceedings; that Schwartz, on the other hand, and Mantis and Kreiselman and others who may have been at the meeting were totally dissatisfied with those promises or assurances of Hoffman, and that they did not wish him to go through with an assignment, and that the final conse-

1636 quence—well, before I come to the final consequence, that during the meeting Mr. Schwartz then said "Never mind your talk of 80 per cent or 70 per cent. Give me definite assurance that 50 per cent or 40 per cent and I will take it," and Hoffman refused to go through. I was also told if he was—

Mr. Walsh: By whom?

The Witness: By Schwartz.

A. (Continuing) I was also told by Mr. Schwartz that he mentioned to Hoffman at the meeting that if he
1637 was sincere about creditors getting a large dividend he could take, in one of their own number in some official status, to more or less supervise or help control the assignment proceeding and that Hoffman refused.

Q. By "one of their number" you mean the creditors? A. Yes, and—

Q. Besides Schwartz and Zuckerman, who were clients of yours, was there any other person at that meeting who was a client of yours? A. Mr. Mantis of the firm of Ribach & Mantis, and—

Q. By the way, do you know the capital, the general capital that is employed by Schwartz & Zuckerman in that
1638 business?

Mr. Walsh: I object to that as immaterial.

The Court: I will overrule the objection.

A. It's upwards of $100,000 for Schwartz & Zuckerman.

Q. And how about Ribach & Mantis? A. Ribach & Mantis is between 125 and 150,000 capital, net.

Q. Were you present at that meeting of creditors? A. I wasn't.

Q. Were you present at the meeting of creditors held at the office of the Dry Goods Association? A. On March 25th in this case; I was not.

Q. Now continuing: After Mr. Schwartz related to you what you just testified, what did you do? A. Well, I didn't complete the conversation that Mr. Schwartz had with me. 16

Q. Well, go ahead. A. Mr. Schwartz told me that the final determination of the meeting at that time was that there should be a cessation or an abeyance of the assignment proceedings altogether, that in the interim creditors would be given an opportunity to examine the stock, have it appraised for the sole purpose of affording creditors an opportunity to get a quick cash substantial settlement on the basis of such appraisal and bids that may be received. He told me further that there was certain days and times fixed for the purpose of having such buyers and appraisers present at the premises, 346 the Bowery, and in several instances the place was closed when it should have been opened, and finally several appraisers were permitted access to the place. He had some buyer, others had others, and that when he communicated with Robert Hoffman on two or three or four occasions, why, he found that Mr. Robert Hoffman was not in—was not in, and Mr. Schwartz left his number and he never received a return call, and so he said to me—Mr. Schwartz did—"Under the circumstances, Schulman, what do you suggest?" 16

I says, "I suggest, perhaps that if I should call him maybe I can have more success or better success in trying to get Mr. Hoffman." 16

Q. Did you call him? A. On or about April 2, 1937, I called him, left my name and number. He wasn't in; left my name and number and received no reply call, and I communicated that fact to Mr. Schwartz.

He said, "Schulman, if that's the case he is trying to double-cross the creditors and we want you to file a petition in bankruptcy against this individual."

Q. Now, did the claims of your two clients come up to the figure required by the Bankruptcy Law in order to

1642 file a petition? A. They did not, and I called this to the attention of Mr. Schwartz, and he said, "Kreiselman will play along with us because he was present at the meeting and he agreed with our ideas as to what form of the liquidation and what settlement we should get."

And I said, "Well, you still have no $500 which is the required amount to file an involuntary petition in creditors' claims," so he said, "You communicate with Morton Goldman's office"—

Mr. Walsh: Who said this?

The Witness: Schwartz.

1643

A. (Continued) "Because he is a lawyer that represented some other creditor or creditors at the meeting. See what they say." And so I communicated with Morton Goldman's office. I spoke to Theodore Goldman and I said to them, "My people were up at this meeting and I understand that Hoffman was at first apparently amenable to cooperating with creditors toward obtaining a settlement rather than go through with the assignment, and now they have difficulty in reaching him by phone or otherwise, and I have had difficulty and my people want me to file a petition in bankruptcy and suggested in view of the fact that their
1644 claims are insufficient that I communicate with your office to find out just how your creditor feels about the situation."

And so Teddy Goldman—Theodore Goldman told me, "I will find out from my creditor and call you back," which he did either late Friday afternoon or Saturday morning. I believe it was late Friday afternoon, April 2, and I communicated again with Mr. Schwartz and I told him that Mr. Goldman's client, who was a creditor for about $260, had the same ideas as they had. "And is it definite that they want a petition in bankruptcy," and he said, "Yes; you sign our name as our attorney to a petition in bankruptcy against Hymowitz. We would much prefer," he says, "to

get the settlement, but if we have a lawyer like Hoffman 1645
who tries to run the assignment himself when we don't want him to run the assignment, file the petition and stop the sale."

Q. He said, "Stop the sale." Did you know at that time that a sale had been contemplated by the assignee? A. The sale was then not only contemplated, it was scheduled for April the 5th.

Q. You knew it? A. I knew it, yes.

Q. Schwartz told you that? A. Yes.

Q. Go ahead. A. The following morning—

Q. April 5th was a Monday, wasn't it? A. April 5th 1646
was a Monday.

Q. On April 3rd what transpired? A. Teddy Goldman called me over to the office and said, "Schulman, I have the papers ready for you; will you sign as attorney for the people?" And I did; I signed the involuntary petition—I signed the involuntary petition in bankruptcy and I signed a petition which they had prepared as attorneys for Ribach & Mantis to—setting forth briefly and generally the circumstances of the assignment and the meeting and that the creditors wanted a settlement rather than an assignment, and therfore I asked that the assignee's sale then scheduled for April 5th at about 10 or 10:30 in the morning 1647
be stayed, and then I understand that one of the boys in Teddy Goldman's office—

Mr. Walsh: Which boy?

The Witness: One of the boys—a boy; I don't know which boy—

A. (Continued) In Teddy Goldman's office went over and filed a petition and obtained the order, signed by Judge Coxe, and they gave me a copy. I in turn made several copies or certified copies or had a certified copy delivered to me, gave it to my process server and had it served on

1648 Hoffman and the auctioneer on Monday at about ten o'clock before the sale.

Q. What happened next? A. At about an hour later or so I received a notice from Robert Hoffman to the effect that he was going to appear before Judge Coxe at 12 o'clock the same morning, to ask that the stay order be vacated. I then communicated with Teddy Goldman and I told him that this notice was served on me and he suggested that in order to eliminate any doubt about it that I call the petitioning creditors to accompany me to Judge Coxe so that they and I could tell Judge Coxe what actually happened at the meeting. I also asked him that he should try

1649 to have his creditor present before Judge Coxe, but his creditor was not present.

Q. Then you appeared before Judge Coxe? A. Right.

Q. Hoffman, you, Schwartz—and who was the other one? A. Hoffman, Wishbow, I, the three creditors: Schwartz, Mantis and Kreiselman—and that's about all.

Q. What happened before Judge Coxe? A. Before Judge Coxe, Hoffman was the first one to talk and he said, "Judge, here we have an assignment sale which we were ready to proceed with in a few minutes, and now we were served—and then we were served with an order staying the sale. In view of the fact that the goods had already been lotted,

1650 that there was an advertisement in the papers setting forth the sale, it would only mean additional expense to creditors to have the sale adjourned or cancelled."

He also said that this petition in bankruptcy would not have been filed were it not for the fact that he opposed Mortin Goldman's attempted domination of this case at the creditors' meeting.

I said to Judge Coxe the following: I said, "I am not interested in anybody's attempted domination of the case at the creditors' meeting or otherwise, and I am not interested in any personal disputes between Hoffman and

Mortin Goldman." I said, "But what I am interested in 1651
is that creditors' wishes should be respected so far as they may be properly respected," and I said to Judge Coxe this: "So far as the additional expense of advertising and lotting and so on and so forth, that if the Underwriters' Salvage Company, the official auctioneer of this Court, should sell, the understanding and the rule is or the understanding between the Underwriters' Salvage Company and this Court is, that where there has been a prior assignment and they come in later to sell, the underwriters, that then there is no duplication of charges for labor or lotting or things of that kind; even though the Underwriters' Salvage Company does check and does possibly relot the merchandise," 1652
so I said, "That's out." "Now," I said, "Judge, here is what happened at the meeting: This man took an assignment for the benefit of creditors without notice and without consent to creditors; that then a meeting of creditors was called and these creditors asked this lawyer Hoffman not to go ahead with the assignment but, rather, to try to effectuate a cash settlement based on a fair appraisal of the merchandise as they are there in the store now, without necessarily making a party for lawyers, for fees and things of that kind;" I says, "and when these creditors did send some appraisers to the place and when they tried 1653
to further the contemplated settlement with the creditors this lawyer persisted and went ahead with the sale and showed an absolute disregard for the creditors' wishes on that score." So I said to Judge Coxe this: "We don't want the assignment. As a matter of fact, we don't want the bankruptcy. We do want a minimized effort or plan to settle the claims of these creditors based upon the value of this merchandise. If Mr. Hoffman will cooperate with creditors then we will try to eliminate the assignment. We will try to eliminate and vacate the bankruptcy and go through on the original plan that the creditors wanted and

1654 which presumably Hoffman acquiesced in at the time of the meeting. On other hand, if Hoffman doesn't wish to go through with that plan, then we will go through the regular routine of bankruptcy. Instead of him—instead of Hoffman or Wishbow, his auctioneer, selling, we will have the Underwriter Salvage Company and this Court sell through an impartial receiver which will be appointed by this Court and go through the regular routine of bankruptcy even though in the final analysis creditors would get less in a bankruptcy case, such as this one was, rather than let Hoffman go through go through with the assignment, but the best thing that creditors wanted was a defi-
1655 nite cash substantial settlement right then and there as quickly as they knew how," and so Judge Coxe turned to the creditors and said—to each one—as a group, and I think each one stood up separately:

"Does that reflect what actually transpired at the creditors' meeting, and is that your wish?"

And each one of them stood up separately and they said, "Yes. Our lawyer told you the entire conversation of what happened at the meeting and his talk to your Honor reflects our wishes in the matter perfectly."

Q. What did Mr. Hoffman have to say? A. Well, after
1656 the Judge—after the Judge heard from the creditors he turned to Hoffman and he said, "Mr. Hoffman, I will have to deny your application. I must adhere to creditors' wishes." He said, "It seems to me that this is a small matter. Go outside and see if you can't adjust your differences."

Q. At any time did Hoffman inform Judge Coxe that Morton and Theodore Goldman and you had conspired together to have an unofficial fund or a secret fund of any kind?

Mr. Walsh: I object to the form of that question, if your Honor please.

The Court: I will overrule the objection. 1657

A. Definitely no.

Q. Was there any statement that Hoffman made to Judge Coxe which in any way imputed illegal actions on the part of the three gentlemen whom I have just referred to, or to any malpractice? A. Not at all; not in the slightest.

Q. Judge Coxe told you to go outside and try to settle it up? A. Right.

Q. And what did you do? A. I turned to Hoffman—outside of Judge Coxe's chambers—and I said to him—I said, "You can't hope to treat creditors in the way that you have been trying to treat them." I said, "It seems to me that you are going on the wrong track." I said, "And if you intend," I said, "to hold and control this assignment case despite creditors' wishes, you are mistaken." I said, "In the first place, you're better off so far as your own client, Hymowitz, is concerned if your effectuate a settlement." 1658

Q. Why did you make that statement? A. I'll tell you why; I explained it to him too. I said, "No matter what settlement is finally arrived at with creditors your man will receive a release of any and all obligations that he may have or the creditors may have against him, or that he may have to creditors, so from your own personal angle or from your own professional angle in your relation with Hymowitz you are better off that way. Second, my creditors then won't have to wait any extended period of time for a small dividend that they might get in an assignment proceeding or in a bankruptcy proceeding, but would rather walk off with a substantial settlement, free from the usually burdensome administration expenses." 1659

So he said, "Well, how can you work that out now?"

I said, "I will tell you what," I says, "it seems to me that Morton Goldman," I says, "who was present at the original creditors' meeting is a more experienced lawyer

1660 than I am and he represents a substantial creditor." I says, "Suppose that you and I and he will sit down at your office, any place, and see if we can't work out some sensible solution of this particular matter so that our original aims of effectuating a quick settlement with creditors and for creditors should be accomplished."

And he said, "All right. When can I meet with"—he says, "I wouldn't like to talk with Goldman about it. I got into a huff at the meeting with him," and so on.

I says, "Forget any personal equations that may exist between you." I said, "You're a lawyer. So is he and so am I. Let us forget these personal angles and let's see
1661 what we can do to work out sensibly," and so he said, "All right, I will try to be at your office tomorrow. In the meantime try to have Morton Goldman present and see what we can do."

Q. Then what happened? A. Well, on April the 7, 1937—I don't know the exact hour—Hoffman came over, and about five minutes or ten minutes or so Morton Goldman came over and the two of them soared at each other like mad chickens.

Mr. Walsh: Like mad what? Mad chickens?

The Witness: Mad chickens.

1662

A. (Continued) And said a few uncomplimentary words to one another, and what not, and I tried to quiet them down. I was in the role of a peacemaker, and the upshot was—or shall I say better language—the substantial part of that conversation was this: There was a dispute between Morton Goldman and Hoffman as to the value of these assets or what it should bring and what it shouldn't bring, and Morton Goldman said, "Well, when you rely on any appraiser that you have, Wishbow or anybody else, that is one thing, but in order to be perfectly fair and impartial about it, why don't you get the appraisal of the Under-

writer Salvage Company; they are the official auctioneers, 1663
recognized by this Court and by a lot of other people. Then you would know how much the assets would be worth. That's one thing. Another thing would be, if Wishbow or anybody else gives you an appraisal, let him guarantee it. It's easy for anybody to say that the stock of merchandise or any other article is worth $1000 or $5000 or anything else, but if there is a guarantee on the appraisal then we know that we are proceeding on something that is definite and substantial, and that we will ultimately receive"—the conclusion of the meeting was, I think, that creditors should be given a further opportunity to send additional buyers to the place and see what it is worth and try to work out a 1664
settlement on what the original creditors wanted at the original meeting.

Q. Was there mention made at that time of some personal loans? A. I think I mentioned to—to Hoffman that in addition to trying to run the assignment proceedings himself he was trying to put in personal loans of some 1200 or $1900 about which there was no—for which there was no support. In other words, creditors were never shown any books or records, bank books or things of that kind, in order to substantiate those claims; I said, "If you are going to make settlement with creditors we will have 1665
to disregard, as we do in usual cases similar to this, we will have to disregard the consideration of personal loans," and he said he would try to get them, he would try to get waivers for those personal loans.

Q. What is the next step after that meeting; what happened next? A. Well, my memory has been refreshed by the reading of these stenographic minutes and what not. About a week later—

Mr. Walsh: What do you mean by "what not"?

The Witness: Beg pardon?

Mr. Fielding: That is just an expression.

1666 A. (Continued) About a week or so later Hoffman came in again and tried to talk to me on what the value of the stock is and what it isn't.

Q. What did he say on that point? A. He started by saying that the stock isn't worth $2000 as he originally thought but it should run very much lower. So I told him that I thought I heard from Phil Cohen of the Dry Goods Association that together with the relief tickets it was worth $1500; that the stock itself was worth between 1000 and $1200, and with relief tickets it was worth $1500, and that Phil Cohen's buyer wasn't interested in the relief tickets. He was simply interested in the stock, so he said,
1667 "Well," he said, "is that about the highest bidder that you have?"

I said, "That's about the highest bidder that I have because I sent over Jack Michaels myself and he told me $1000, and I understand that Schwartz's man offered something like $1100, so he seems to be about the highest bidder, but that doesn't preclude you or anybody else from getting any higher bids." I says, "Could you get anybody else? Let him give $1400, $1500, any amount up to $2000 for the assets so that the settlement should be based on the highest bid."

1668 And he said, "No," he didn't have anybody definite, any man that would beat the bid of Phil Cohen's buyer, and he said, "Let's work out the proposition of this settlement." He says, "But how about fees?"

I said, "Well, I am only one of three or four in the picture. I can only give you my ideas." I said, "It seems to me," I says, "that I would cut out right from the very beginning Kandell and the Association; they are no lawyers and not entitled to compensation except some minor consideration for holding the meeting and doing some paper work." I says, "You, on the other hand, you are attorney for the assignee, you have got a job and you are going to

do some work. I am here as attorney for the petitioning 1669
creditors. I am going to try to effectuate this settlement. Morton Goldman, representing creditors, will be the man who will actually work out the mechanics of it."

I said, "He will be entitled to a fee for his firm and so my opinion—in my own judgment," I says, "there shou' be a three-way division of any fees after we shall have arrived at a definite settlement with the creditors."

Q. What figure was being discussed at that time as the value of the merchandise plus the value of the food tickets? A. $1200 for the merchandise and $300 for the relief tickets.

Q. So that all your conversations were based on that 1670
sum of money as being the fund which was going to be distributed? A. Exactly.

Mr. Walsh: I object to that. I think the witness should testify what the result of it was. That is a leading question.

The Court: Yes, it is leading, but I will overrule the objection. It is more or less of a recapitulation which ought more or less not be done. But I will overrule the objection.

Q. Did you answer the question? A. I said, $1200 for 1671
the merchandise and $300 for the relief tickets.

Q. At any time was any other sum of money mentioned? A. Hoffman tried to think that the relief tickets were worth $400 instead of $300 but from what I understood from Phil Cohen, that Mr. Abramson wouldn't want the relief tickets and that this increased—calculated it to be worth $300 that he would pay for it.

Q. At that time—

Mr. Walsh: May I interrupt for a second?

Will you read that last sentence over, Mr. Stenographer.

(Answer read.)

Q. Did anybody—and by that expression I mean any of those names that you have just mentioned—know definitely at this time the exact value of those food tickets? A. No, sir.

Q. It was a claim against the city that had to be liquidated? A. Exactly.

Q. And $300 was the sum mentioned as what they would probably be worth? A. Exactly.

Q. Using those figures, what did you do regarding a possible settlement with the creditors? A. Well, at the first meeting—I think it was April 7th—we took the round figure of $1500 and said that if $1000 were to be allocated to creditors, that would amount in rough—that is, roughly 40 per cent; there would then be some disbursements of up to about $100. For instance, assignee's premium on bond of $1500; he had another expense of $10. That would make a total of $25, expenses of the assignee. I had $35 expenses in filing the petition and serving the certified copies of the order on Mr. Wishbow and Mr. Hoffman. There were other incidental expenses which would leave about $400 to take care of all other preferred claims and the fees that Mr. Hoffman was talking about. We even said at the first meeting—and so did Mr. Goldman, when Mr. Hoffman mentioned, "Well, who is going to determine the fees," and what not.

"Let any and all creditors, Niehouse, Donaldson or anybody else sit in if we couldn't agree among ourselves; let any or all creditors fix fees. We are not interested. We are interested primarily," and I told him specifically that I represented these people for ten years and I am interested primarily in these creditors rather than a $5 bill more or less. At the second—and so if we would have a fund of about $400 there would be approximately, according to my

own knowledge, 125 or $135 each, from which there would 1675
have to be a re-allocation to cover the expenses of rent, the assignee's rent, any little fee for the assignee, the labor of the auctioneer and possibly some fee, and so that ultimately there would be some net fee for ourselves.

At the second meeting, on or about April 14th, we went into those figures a little bit in greater detail. For instance, I said that—

Mr. Walsh: That "for instance," before he starts, unless it is what he said at the meeting—

Mr. Fielding: Well, we will consent to strike out "for instance." 1676

The Court: Very well.

Mr. Walsh: If it is an example I have no objection, but if he is making an explanation—

Mr. Fielding: I consent to have it stricken out.

The Court: I will permit him to state the conversation.

Mr. Walsh: Yes.

A. (Continued) The conversations on April the 14th, or the week after, centered themselves on how much or how little we could give to the auctioneer and how little we can pay for the assignee's rent claim and the other 1677
incidental expenses, and we figured out that there would be approximately $260 expenses which we would have to pay, which would have the category or status of preferred claims, and here they are:

$50 assignee's fee and expense; $75 rent; $100 auctioneer's labor and expense, which might also include a fee, or being inclusive of a fee, and possibly there was one—$35 for my disbursements. That would leave $1000 to creditors, $260 for these expenses that I just enumerated now, approximately $240 to be divided three ways, between Goldman, Goldman's firm, Hoffman and myself, and out of which—

1678 I beg your pardon, so that that would be approximately $80. And in the course of the conversation Hoffman said to me, "Well, Wishbow wants $100 for himself above his expenses of labor and lotting and what not."

So I said to him, "I won't countenance any such fee. He will actually be making somewhat more even than the lawyers themselves, and since when are auctioneers partners with lawyers?"

At any rate, I told him that if he was amenable to the whole situation, that he should get a bill of sale from his client to cover the fees, to cover the stock, and that if it is agreeable to him and agreeable to Goldman that I would
1679 hold the money or else Goldman could hold the money, it made no difference to me, and that's that.

Q. At any time during these discussions, all of which took place at your office, did they not? A. Right.

Q. Was there any mention made of any basis of settlement using a figure of $1900? A. Never.

Q. What was the only figure, which was the basis for all these discussions, as the quick settlement of the case? A. $1500 comprising as aforementioned.

Q. Everybody sort of agreed that that would be the best way out? A. I had communicated with my people and
1680 they thought that was the best way and they even sent me consents later.

Q. I am coming to that now. After the conferences had been held there was some paper work to be done? A. Right.

Q. And what was that work? A. Well, steps had to be taken to dismiss or vacate the bankruptcy proceeding, and likewise the assignment proceeding. Third, to send out a bulk sales notice to the creditors, based on the figures that we just talked about. Fourth, the bulk sale notice should have the consents or releases to be signed by creditors, and fifth, of course the actual disbursement of the money. There were other incidental matters, such as the

actual collection of the outstanding relief tickets from the 1681
city, the possible adjustment with the city on the City Sales Tax claim, and that's about all that I can think of at the moment.

Q. As a matter of fact, were consents sent out to creditors? A. Yes.

Q. And did your clients consent to the settlement? A. Yes.

Q. At 40 cents on the dollar? A. At 40 cents on the dollar.

Q. Well, the settlement did not go through, did it? A. No.

Q. Why? A. I heard from Teddy Goldman that Hoffman 1682
had been served with a notice to show cause on behalf of Endicott-Johnson.

Q. Who are they? A. Endicott-Johnson, to my knowledge, are shoe dealers of national reputation, and a creditor in this case.

Q. That's it; not represented by you? A. No.

Q. Or by Mr. Goldman? A. No.

Q. Go ahead. A. They are simply an independent creditor that wanted to remove—made a motion or an order to show cause to remove the assignee and his attorney on the ground that those two individuals were selectives or de- 1683
signees of the debtor himself, not indicated or consented to by creditors; and second, that the bulk sale which contemplated a 40 per cent settlement in full release of their claims was not agreeable to them; that it was the policy of Endicott-Johnson to take the settlement if they thought it was fair but not to release the debtor from any balance, and so—

Q. Well, that was a wholly independent action outside of what names that were mentioned here? A. Exactly.

Q. Now subsequently did another creditor refuse to agree to that settlement? A. I once saw in the office of Goldman,

1684 Malter & Goldman some letter from a creditor by the name of Siff, that he did not care to send in a consent to the 40 per cent settlement.

Q. So that the settlement could not go through? A. Exactly.

Q. And it did not go through? A. I should say also with respect to Siff, I think he may have indicated in his letter—the letter wasn't—

Mr. Walsh: I object to what he indicated, unless he can testify.

The Court: I will sustain the objection. I will

1685 permit him to answer to the best of his recollection if he has any.

Mr. Walsh: I will take that.

Q. Give your best recollection. A. Well, my best recollection is that Mr. Siff didn't wish to consent to the 40 per cent settlement or to have the assignment proceeding vacated.

Q. That order to show cause and the motion for which that was the basis never reached argument or decision, did it? A. So far as I know, no.

Q. You had no part of it? A. No.

1686 Q. Well, do you know what did result from that application? A. Yes, sir.

Q. What? A. The application was disposed of and settled in this fashion: Endicott-Johnson selected and recommended another auctioneer who should be the actual auctioneer who should do the actual selling under the assignment proceeding. He was—they were satisfied with that, plus the retention of Goldman, Malter & Goldman as co-attorneys in the assignment proceeding. That's all.

Q. And a stipulation to that effect was signed? A. So far as I know, yes.

Q. Did you attend the sale? A. Yes, sir.

Q. Who sold the property? A. Eddie Lipkowitz, the auctioneer selected by Endicott-Johnson. 1687

Q. And that claim was consummated according to that stipulation? A. Yes, exactly.

Q. How many times were you at the store where the sale was held? A. How many times was I at the store when the sale was held?

Q. I will withdraw that. I am thinking of two questions at once. How many times were you at the store where the sale took place? A. Once.

Q. When was that? A. The date of the sale sometime in the early part of June, 1937.

Q. Were you down there with Abramson? A. Abramson wasn't there at all. 1688

Mr. Walsh: I move to strike the answer out as not responsive.

The Court: I will overrule the objection.

Q. On any other occasion? A. I was not at the store with Mr. Abramson on any other occasion.

Q. Well, you heard Mr. Kolman testify here that you and Abramson were over in a corner, after looking the merchandise over, and he heard very little of the conversation except an expression "five line." Did you hear that testimony? A. I heard that testimony, and I am afraid it is quite— 1689

Q. Is that true? A. It is not true.

Q. Now do you recollect at the sale there were bids made first in bulk? A. (No response.)

Q. You may answer. A. Whether there were sales made in bulk? A. No.

Q. Do you recollect first that there were bids obtained, in bulk? A. Yes, sir.

Q. What was the highest bid made? A. $1350 or $1370.

Mr. Walsh: What was the date?

The Witness: June 5.

1690 Q. 1937? A. Yes, sir.

Q. So that that bid was not accepted? A. That bid was not accepted.

Q. And thereafter the merchandise was sold, lot by lot? A. Single lots.

Q. And what price did they bring? A. Something like $1500.

Q. That is your best recollection? A. Yes, sir.

Q. And what did that sale take in? A. Merchandise and fixtures.

Q. Did you have any further professional activities in connection with the matter from that time on? A. No, except very incidentally and that is this, my creditors were
1691 disappointed when they received a 16 or 17 per cent offer from Mr. Robert Hoffman in the assignment proceedings, and they refused to accept it, and I had to go through the formality of getting an order of the Supreme Court directing the City Chamberlain of the city treasury of the City of New York to pay over their respective dividend checks, because that money had been deposited by Hoffman with the city treasury.

Q. Was there any time in your conversation with Hoffman, or with the Goldmans, any talk about a secret fund?
1692 A. No.

Q. When was the first time you heard of a secret fund? A. When I read it in the newspapers, in the early part of February, when the indictment was found.

Q. And the printing of the news of the indictment carried that information? A. Yes, sir.

Q. And that is the first time you heard of it? A. Exactly.

Q. Did Hoffman make the suggestion to you that—

Mr. Walsh: I object to that as leading.

Mr. Fielding: I don't see how it is leading.

The Court: Let him finish his question first.

Q. At any of those conferences was there any mention made that any sum over and above to pay the creditors should be kept secret? A. No, sir, he never used that word, or they. 1693

Q. You didn't know your office was being subjected to this listening device? A. No, sir.

Q. So there was no need at any time for you to be careful about the setting? A. No.

Q. So you expressed your opinion on some occasions in language that you would not use in a courtroom? A. Right.

Mr. Fielding: Your witness.

The Court: Does any other defense counsel care to ask the witness any questions at this time? 1694

Mr. Corbin: I don't think of anything now, your Honor.

The Court: All right. Cross examination, proceed.

Cross examination by Mr. Walsh:

Q. Your language would have been the same, Mr. Schulman, at the meetings of April 7th, the 14th, 21st and 26th, had you known that a hearing device was against your wall? A. Certainly.

Q. Would it? A. Certainly.

Q. Let me ask you this: Are the conversations which you heard in court that Mr. Bodinger testified to, are they substantially correct? A. No, sir. 1695

Q. They are wrong? A. They are garbled, they are incomplete.

Q. I didn't ask you that. They are wrong? A. Well, they are incomplete.

Q. And they are garbled? A. And they are garbled.

Q. What else? A. That is all I can tell you.

Q. Can you supply the parts in any particular part of the conversation that are incomplete? A. I would be a wizard if I could. Only certain portions I could, after

1696 having my recollection refreshed, but to unravel this I could not do this and I would not undertake to do it.

Q. How long have you epresented the firm of Schwartz & Zuckerman? A. Since about 1927 or 1928.

Q. And did you ask Mr. Schwartz or Mr. Zuckerman to send any appraiser down to the store? A. They did that of their own volition, because that was the substance of the creditors' meeting.

Q. You say you knew nothing about the bankruptcy or insolvency, we may call it that for the time being, of Paul Hymowitz, until April 2nd, 1937? A. Either that day or possibly the day before; I think most likely April 2nd, 1937.

1697 Q. That is what I said, April 2nd. A. That is right.

Q. How long had you been representing Mantis? A. Also since about 1928.

Q. Did you handle all matters for that particular firm? A. I imagine I did, if they gave them to me.

Q. Did you or didn't you? A. I cannot be the judge of that. If they gave matters out to somebody else, I don't know.

Q. Did you consider yourself the attorney for those two firms? A. Yes, sir.

Q. You say that the first time that you heard anything about this was April 2nd, 1937? A. That is right.

1698 Q. And if my memory serves me correctly, you said Mr. Schwartz called you on the telephone, or came up to your office on April 2nd and told you? A. Called up.

Q. Now, Mr. Schwartz was at the meeting of March 25th, wasn't he? A. I assume he was.

Q. So Mr. Schwartz knew the condition of the affairs of Hymowitz from March 25 until April 2, before he consulted with you, is that correct? A. He knew apparently what transpired at the meeting. I don't know what else he knew.

Q. You say he didn't communicate any of the facts that

transpired at the meeting of March 25 until April 2nd, when he came to your office? A. Yes, sir, he then called me up. 1699

Q. He called you up and recited to you what you have said to his Honor and the jury, is that right? A. That is right.

Q. That is the first time you knew anything at all about the Hymowitz affair? A. Exactly.

Q. Prior to April 2nd had you ever communicated with either Theodore or Morton Goldman concerning the Hymowitz matter? A. I don't believe I did.

Q. Did you communicate with them, meaning Theodore and Morton Goldman, on April 2nd? A. April 2nd, yes, sir. 1700

Q. Now when was it you decided to file a petition in bankruptcy against Hymowitz? A. When my people told me to do it on April 2nd, 1937.

Q. You immediately decided to file a petition in bankruptcy? A. I didn't make the decision. The creditors did it.

Q. They told you what happened and they said "We will throw him into bankruptcy"? A. I didn't say any such thing.

Q. Well, what did you say, what else? A. I said on direct examination, Mr. Schwartz, in view of Hoffman's conduct and lack of cooperation said "We want you to file a petition in our behalf." 1701

Q. Was Mr. Schwartz het up about the conduct of Mr. Hoffman? A. He was not content with it.

Q. Did he express to you by words or gestures that he thought Mr. Hoffman was not doing the right thing? A. That is the inference.

Q. Was Mr. Schwartz mad? A. I couldn't tell you what was his degree of madness over the telephone.

Q. I am not asking you about the degree. I am asking you now did he say that he was perturbed about the con-

1702 duct of Hoffman? A. The only way I can characterize it, he was discontented and dissatisfied.

Q. Did you ask him how long he had been discontented and dissatisfied? A. I did not.

Q. He told you he had been from March 25th until April 2nd? A. He didn't tell me he was discontented and dissatisfied. He told me the incidents as to which he directed me to file a petition and from these my inference was that he was discontented.

Q. Did he communicate to you by word that he was dissatisfied? A. Yes, sir, exactly, he told me he called him three or four times over the telephone and could not get
1703 him.

Q. Did he tell you that he tried to communicate with him because of Hoffman's action on March 25 at the creditors' meeting? A. No, it was not discontent as of March 25th; it was two or three or four days that followed, when he could not get hold of him on the telephone.

Q. Well, did he tell you that he was satisfied or that he didn't want to petition, if he could see the store, and appraise the stock? A. That is an incomplete version of what he wanted. In other words, he wanted an appraisal, he wanted a bid, and more important, a settlement. Hoff-
1704 man didn't afford any opportunity to get the settlement.

Q. Well, did you call Mr. Hoffman? You heard him testify here, did you not? A. I heard him plenty.

Q. And he testified to the effect that on March 24th you called him up and asked him and that you told him you represented Schwartz, is that true? A. So far as I know I never called him on March 24th.

Q. Or 25th? A. No, sir.

Q. In other words, you never called him up until about when? A. April 2nd, 1937.

Q. Did you have a conversation with him at that time? A. No. He was supposedly out.

Q. Did you speak with Mr. Kolman? A. No, I never knew 1705
of him.

Q. You knew he was the assignee? A. That was a name, whether in the same office, I didn't know.

Q. I show you Government's Exhibits 5-A; 5-B and 5-C, and also Government's Exhibit 5, and I ask you when for the first time you ever saw those exhibits and knew that they were exhibits sent out on March 25th to all the creditors. A. I may have seen them. I don't know whether I had them at the time that I filed the petition or subsequently; I cannot tell you that.

Q. Did you ever see them? A. Sure I did.

Q. Well, who gave them to you? A. Schwartz and Zucker- 1706
man.

Q. When? A. I don't know, they came in the mail and I didn't make any notation as to when they came.

Q. Did you have those prior to the time you filed the petition? A. That I cannot tell you.

Q. Now did you ever represent Schwartz or Mantis in any other proceeding which involved insolvency? A. Sure.

Q. On many occasions? A. On a number of occasions.

Q. You know something about insolvency proceedings, by that I mean assignment proceedings and also bankruptcy. A. A little bit.

1707

Q. Is that because of your lack of experience or— A. I want to be modest.

Q. You have handled many bankruptcy matters, have you not? A. I don't know what you mean by "many".

Q. Well, would you say you handled one? A. In 1937 I handled four bankruptcies and in 1938 about two and in 1939 about two and in 1940 none; if that is many, fine.

Q. How many did you have prior to 1937? A. In 1936 I handled about six.

Q. When you say bankruptcy, do you mean assignments for the benefit of creditors? A. Assignments for the benefit

1708 of creditors, I don't think I ever had one in two or three years; I don't think I had two assignments where I was attorney, or attorney for the assignee.

Q. Were you associated with any other attorney that did handle bankruptcy matters? A. No, sir.

Q. You never did? A. No, sir.

Q. Were you connected with Theodore Goldman in this particular controversy? A. Only to the point I testified.

Q. Tell me again—

Mr. Fielding: I respectfully ask that the witness be permitted to finish his answer without interrup-
1709 tion.

Mr. Walsh: I am sorry. I was merely trying to save time.

Mr. Fielding: Never mind about saving time.

Mr. Walsh: All right. Thank you.

A. Only to the point, they represented one shoe creditor for $260, who joined my people in filing an involuntary petition in bankruptcy, and to the further point that we tried to cooperate together to effectuate a settlement, which would be agreeable to creditors, even if Hoffman at the beginning was inclined not to cooperate on that basis.

1710 Q. You are talking now about this case? A. I am talking about the Hymowitz case.

Q. Now did Schwartz or Mantis ever come to your office on April 2nd? A. My best recollection is that they didn't. It was largely telephone conversations.

Q. Everything was over the telephone? A. That is my best recollection.

Q. And did you tell them that in your legal opinion it would be better to file a petition in bankruptcy? A. No, they told me.

Q. Did they give you any authorization to sign as attorney in fact? A. Positively.

Q. Now where was the petition in bankruptcy, in the matter of Paul Hymowitz, drawn up? A. In the office of Goldman, Matter & Goldman. 1711

Q. And where were they located then? A. 302 Broadway.

Q. Who drew it up over there? A. I don't know.

Q. You don't know? A. I was not there when it was drawn up. I simply signed it.

Q. Where? A. At their office.

Q. Who handed it to you to sign? A. Theodore.

Q. Theodore Goldman handed you Government's Exhibit 3 in evidence. Is this the petition that he handed to you to sign (showing witness)? A. Let me see the signature, please. That is right. 1712

Q. And at that time did you have any discussion concerning this particular petition? A. Yes, sir.

Q. After you had a conversation with Schwartz, did you also discuss the situation of Hymowitz with Mantis and Ribach on that occasion, too? A. What do you mean the situation?

Q. Schwartz did call you up and tell you he was dissatisfied at the manner in which Hoffman was handling this matter? A. In the manner that I testified to.

Q. Did Ribach and Mantis call you up? A. They were neighbors and it may well be—

Q. Did Mr. Mantis or Mr. Ribach call you up on or about April 2nd and tell you that they too were dissatisfied with the way Robert Hoffman was handling the assignment? A. I will tell you how it happened. Will you permit me? 1713

Q. After you have answered my question, then you can give us any explanation you want, Mr. Schulman. Can you answer the question, first? A. Do you want me to answer the question in your way or in my own way?

The Court: Answer it yes or no, then you can explain it if you wish.

Mr. Walsh: I don't care how he answers.

1714 A. (Continuing) My answer is yes; and here is how it happened: Mantis had been a neighbor of Schwartz's in business and when Mr. Schwartz called me up, apparently he was on his telephone. He told me—

Q. Whose telephone? A. Schwartz's. He told me that Mr. Mantis was in his place of business, and after he got through gave me the explanation that he did. I said "Is Mr. Mantis there, Mr. Schwartz?" He said "Mr. Mantis is here. Do you want to talk with him?" My best recollection is I said to Mr. Mantis, "Are you satisfied the same way as Mr. Schwartz is?" He said, "Yes." "In other words, do you want me to follow the same instruction Mr. Schwartz
1715 gave me?" and he said "Yes."

Q. In other words, Mr. Schwartz and Mr. Mantis instructed you to file a petition in bankruptcy? A. Yes, sir.

Q. And authorized you to sign as attorney in fact in their name? A. In so many words they told me to sign it, and that included the authorization, of course.

Q. Who is Kreiselman? A. He happens to be another creditor in this particular proceeding.

Q. Is he a client of yours? A. He has been, but for five or six years before I never got any matters from him.

Q. Did you or Theodore Goldman get Kreiselman's signature? A. I cannot tell you where or how he signed the
1716 petition.

Q. I want to know how he came to sign it, Kreiselman. A. I cannot tell you, I don't know.

Q. Did you know that he was a creditor? A. Sure I knew he was a creditor.

Q. Who told you that? A. Mr. Schwartz did.

Q. Who? A. Mr. Schwartz.

Q. Did you communicate that information that Kreiselman was a creditor to Theodore Goldman? A. Yes, sir, I told him that I believed Schwartz & Zuckerman, Ribach and Mantis, and that another neighbor of theirs is Mr.

Kreiselman who is another one who would play along or go along with them in joining in this petition. 171

Q. Now who is Harry Levy? A. Well, Levy I never met him. I understand he is a client of Goldman, Malter & Goldman.

Q. I call your attention, Mr. Schulman, to this paper; you signed this on April 3rd, 1937, is that correct? A. Yes, that is correct.

Q. That was a Saturday? A. I think so.

Q. And where did you sign that? A. In Theodore Goldman's presence.

Q. Was Theodore Goldman present at that time? A. Yes, sir. 171

Q. And before you signed it, and correct me if I am wrong, I presume you looked over the petition? A. I looked it over.

Q. You read this petition? A. I glanced over it.

Q. You ordinarily do that for the protection of your clients when you represent them? A. I glanced over it to see if it was the right one, that it related to Hymowitz.

Q. Naturally for the protection of your clients? A. To see if it was the proper petition to file.

Q. What was the purpose? The purpose was to protect your clients, wasn't that the fact? A. No, the purpose was to vacate it, Hymowitz was in bankruptcy— 171

Q. You cannot do it unless you file a proper petition. Did Schwartz and Mantis tell you to file a petition? A. They told me to execute the petition in their behalf against Hymowitz. That is what I did.

Q. Were you not interested to see whether the petition was correct? A. Yes, sir.

Q. Therefore you looked it over? A. Certainly I did.

Q. Were you there when Kreiselman signed that? A. No, sir.

Q. Or Harry Levy? A. No, sir.

1720 Q. Do you know Harry Levy? A. I never met him in my life.

Q. Can you answer this question: Did you sign before Kreiselman and Harry Levy? A. My best recollection is the names of Kreiselman and Levy were on there before I signed it, on that petition. In other words, I was the last one to sign it.

Q. So the names of Kreiselman and Harry Levy were on there, written in before you signed it? A. Before I signed it.

Q. And this had all been done in the office of Theodore Goldman? A. I signed my name in the office of Theodore
1721 Goldman.

Q. And the acknowledgment also was in Theodore Goldman's office? A. Yes, sir.

Q. And Theodore Goldman had given to you this petition? A. Yes, sir.

Q. And you looked it over? A. Yes, sir.

Q. The act of bankruptcy, which is claimed here, Mr. Schulman, is the fact that the petitioner transferred and set over to certain individuals money in the amount of approximately $500, which should have been applicable to the debts of the alleged bankrupt. In other words, did you have any proof or did you know at any time that Hymowitz
1722 had set over and paid, within the past four months, moneys to creditors, in anticipation of bankruptcy? A. Your question begins with a wrong premise. It is not that the petitioner paid over $500. It is that the alleged bankrupt paid over $500.

Mr. Walsh: I am sorry.

Q. The alleged bankrupt? A. Right.

Q. Did you know that? A. No, that is the general allegation used in all bankruptcy petitions.

Q. I understand that if you have no other basis on which 1723
to predicate— A. I wouldn't say that either.

Q. May I call your attention to the fact that No. 6 is a specific allegation to the effect that the alleged bankrupt has made an assignment for the benefit of creditors? A. That is right.

Q. And you knew that at the time you filed it, didn't you? A. Sure I did.

Q. You knew nothing about $500, did you, being paid over by Hymowitz? A. That is a general allegation. You will find that in a thousand petitions.

Q. Maybe there was some basis for the thousand petitions. What I want you to tell me is, you used an act 1724
of bankruptcy which you knew was a fact? A. Better ask that of the legal draftsman.

Q. Who is the legal draftsman? A. Theodore Goldman. I say he did.

Q. You knew you were going to make a motion to dismiss the petition? A. No, sir.

Q. You were served with a petition by Mr. Hoffman, were you not? A. No, I was served with an affidavit of Mr. Hoffman through Goldman's office.

Q. And that was served as a result of the conversations which were had in order to vacate and eliminate the bank- 1725
ruptcy and eliminate the assignment? I show you Government's Exhibit 3, and ask you whether that is the affidavit and the motion? A. That is right.

Q. And were you familiar with how easily that that petition could have been dismissed, because you didn't say it had been for an assignment? A. Because I didn't allege to go in to bankruptcy as an assignment for the benefit of creditors.

Q. I will take it that way. A. No, I would not say that.

Q. You don't know that? A. What do you mean I don't know that?

1726 Q. Let me put it this way: Did you know that there was a jurisdictional defect when that petition in bankruptcy was drawn up and that it could be easily dismissed at any time because of the jurisdictional defect? Did you know that at that time? A. There is no jurisdictional defect in this involuntary petition as it is drawn, and nobody can say otherwise.

Q. I am trying to get your reaction as of April 3, 1937. Did you know at that time that there was no jurisdictional defect? A. Certainly there is no jurisdictional defect in this involuntary petition.

Q. I asked you did you know that? A. Certainly.

1727 Q. Your answer is "no"? A. Yes, sir.

Q. Which was subsequently dismissed because of a jurisdictional defect? A. No.

Q. On what ground? A. On the ground that the allegations were not set forth in detail.

Q. Would that be a jurisdictional defect? A. No, simply a question of pleading.

Q. What do you call it? A. Simply a motion addressed to the pleadings.

Q. Did you know on April 3rd, 1937, that it could have been dismissed because no specific allegations of bankruptcy was made? A. No.

1728 Q. You didn't look at it at that time in that light? A. Not in that light.

Q. When this was served on you, Government's Exhibit 3, which is the affidavit and notice of motion, a copy of this was served on you on what day? A. It says here May 6, 1937.

Q. Is that correct? A. I assume that is correct. I have no personal knowledge of it.

Q. Did you appear in opposition to this? A. No, I didn't.

Q. You didn't? A. No, I would not.

Q. It had been agreed at that time to dismiss the peti- 1729
tion? A. To dismiss the petition, to dismiss the assign-ment and vacate the 40 per cent settlement.

Q. Between whom was this agreement made? A. Well, that was my talk with Mr. Hoffman and my talk with my creditors.

Q. Did Goldman enter into this talk at all about the dismissal? A. I had assumed that the Goldmans were equally desirous of furthering this idea, which had been the original idea at the creditors' meeting, and about which I spoke to Judge Coxe.

Q. Now on April 2nd, after Schwartz called you up, did you immediately get in touch with Theodore Goldman? 1730
A. No, I tried to get in touch with Mr. Hoffman and I could not. I called my people back and told them he is not there, he has not called them, and then they suggested calling up on my phone Goldman, Malter & Goldman, to find out if they had a creditor who would join them in a petition in bankruptcy.

Q. Did you know on April 2nd, 1937, that the sale was scheduled to take place on the 5th of April? A. I most likely did know it.

Q. Well, did you? A. My best recollection is that very likely I knew it.

Q. And isn't that the only reason that the petition in 1731
bankruptcy was filed, to stop that sale, so you could get in on this picture? A. No, sir.

Q. Well, were you opposed to the sale going through? A. I certainly was.

Q. Because Mr. Schwartz told you that he was opposed to it, is that the reason? A. I was opposed to it from the entire story that Mr. Schwartz gave me.

Q. When you were over at Goldman's office on April 3rd, 1937, and the time that you signed this petition, did you have a conversation with Theodore Goldman? A. Sure I did.

1732 Q. Tell us everything you said and everything he said to you, will you? A. I said to him, originally his firm's name, Goldman, Malter & Goldman, and his firm's address, 302 Broadway, was typewritten on the petition, and I said to him, "I think it would be a good idea if you use my name, for the reason my creditors might not like to be represented by somebody else that they don't know very well, and it might be better that you insert my name as attorney for the petitioning creditors and my address." That he did. I also asked him, "Will you consent for this petition to be filed and I have an order signed at the same time, and send me a conformed or certified copy after
1733 signing, so I can take care of the serving of Hoffman and Wishbow, the auctioneer." That was the sum and substance of that conversation.

Q. Do you remember anything else that was said? A. No.

Q. You say that Theodore Goldman drew this petition, being Government's Exhibit 3? A. I didn't say that. I told you he handed me it to sign. Whether he or X Y Z drew it up, I don't know. I told you that before.

Q. I am sorry. A. Well, I accept your apology.

Q. Although you didn't draw this petition up, or know whether Mr. Goldman drew it up, nevertheless you are
1734 supposed to be the one who had charge of it? A. It was prepared in a high class legal office and I am satisfied with that.

Q. Do you usually allow your name to be used by other people that draw petitions up? A. No, but when I am working in cooperation with good lawyers I can let them prepare papers for me, and let them sign.

Q. Are Merton Goldman or Theodore Goldman experts in bankruptcy? A. I don't know whether they are experts, but I regarded them highly.

Q. In what other way? A. In every way, from the code of ethics to—

Q. Incidentally, did you read the code of ethics? A. I did. It was one of the requirements before I was admitted to the bar. 1735

Mr. Walsh: I withdraw that.

The Witness: I answered it.

Q. Did you have confidence in the manner in which the Goldmans could, if they did, draw up a petition, and you allowed your name to be used to it, did you? A. I certainly did.

Q. Well, they had quite a little experience in bankruptcy? A. They had more than I did.

Q. Much more? A. I don't know exactly what their number of cases totalled but I know it was more than mine. I was a single practitioner. They had a good office. 1736

Q. Did you know Morton Goldman was the secretary of the Committee on Bankruptcy? A. I never heard of that until I read it in the papers.

Mr. Fielding: What association?

Mr. Walsh: Bar Association of Brooklyn.

A. (Continuing) I don't think he is secretary of the Brooklyn Bar Association. He is the secretary of a committee in the Brooklyn Bar Association, according to the newspaper reports. 1737

Q. Most of your information is gotten from the newspapers, is it? A. Most of my information about Morton Goldman being the secretary of some committee in the Bar Association is from the newspapers.

Q. You also testified that the first time you ever heard of a secret fund that was to be split up between yourself, Hoffman and the Goldmans, was in the newspapers. A. Right, because whoever got this indictment ran to the newspaper quick.

Q. They did? A. Oh, quick.

1738 Q. Now, is it not a fact, Mr. Schulman, that the reason that you got Harry Levy and Kreiselman was because of the fact that you yourself didn't have $500 worth of creditors? A. That is a very unfair question. I never got Harry Levy. I never spoke to him in my life, and I never saw him. How could I get him?

Q. I ask you whether or not isn't that the reason you got in touch with Theodore Goldman? A. The reason I got in touch with Theodore Goldman was because my people wanted to file a petition in bankruptcy and their claims did not total $500, and my clients who were interested suggested that I call up the firm of Goldman, Malter &
1739 Goldman for the purpose of having their creditors join with them in this step.

Q. Did you have a list of cerditors before you called up Goldman? A. No, sir. I never had a list of creditors until Mr. Hoffman gave it to me in the middle of March, 1937.

Q. Is that the first time? A. That is the first time.

Q. Now you say subsequently, on April 5, you appeared before Judge Coxe? A. That is right.

Q. You are not tired, are you? A. I have been tired for the last two years, and more than that.

1740 Q. What happened before Judge Coxe? Did you say to him that you had nothing to do with the Goldmans in this matter? A. No. Why would I say that?

Q. Well, what did you say then? A. When Hoffman made some kind of a remark, that the only reason for filing the petition in bankruptcy was because Morton Goldman wanted to dominate it, and I would not let him. I told him I was not interested between Morton Goldman and himself. I was interested in the creditors who told me to go for them and whom I represented for the last ten years.

Q. Did you tell Judge Coxe you had nothing to do with the Goldmans in this proceeding? A. I deny that.

Q. You heard Mr. Hoffman testify to that? A. I don't 1741
believe he testified to that, to the contrary. I may be mistaken on that point.

Q. I don't understand you. A. I don't believe Mr. Hoffman testified in this court that I told Judge Coxe I had nothing to do with the Goldmans. I may be mistaken on that point.

Q. Well, I will read you the answer to make sure that there is no disagreement about it. I read from page 87, Hoffman on direct:

"Q. Well, tell us what he did before he did something finally and tell us what he did finally. A. Well, I ex- 1742
plained to—rather, I stated to Judge Coxe all the facts in that case, and then Mr. Schulman made a statement that he was not interested in Mr. Morton Goldman, that he represented the petitioning creditors, and if there were any argument between Mr. Goldman and myself, he was not interested in it."

Is that correct? A. That is what he testified to?

Q. Was that what you said? A. No, I told Judge Coxe I was not interested in any personal equation between Morton Goldman and Hoffman.

Q. You also testified you were not interested in the domination of Mr. Goldman. A. I didn't. 1743

Q. "That I am not interested in any domination by Mr. Goldman," before Judge Coxe. A. I didn't say so.

Q. You are sure of that, that you didn't state it, "I am not interested in any domination by Mr. Goldman"? That was on your direct examination. A. I said I am not interested in any dispute between Hoffman and Goldman with respect to Goldman's attempted domination of this case.

Q. You are not interested in any dispute between Hoffman and Goldman, so far as the domination by Morton

1744 Goldman in this case; is that what you said to Judge Coxe? A. Again I tell you I did not.

Q. Is that what you said? A. I don't think in that language.

Q. Tell me what you did say.

Mr. Fielding: I object to this as repetitious.

The Court: Just a minute.

Mr. Fielding: Your Honor, I object to it as repetitious.

The Court: Objection overruled. Cross-examination.

1745

Q. Now tell us once and for all what you did say after Mr. Hoffman made his remarks concerning his transaction with Goldman. A. Hoffman told Judge Coxe—

Q. I am asking you what you said. A. All right.

Q. Thank you. A. I said that "I am not interested in any personal dispute between Goldman and Hoffman, relative to Goldman's attempt to dominate this case. I am here as attorney for these creditors, who are sitting before your Honor."

Q. What was the attempted domination of Goldman that you knew of on April 5th when you made that remark to
1746 Judge Coxe? A. The only thing I knew of the question of domination was what Mr. Hoffman told Judge Coxe.

Q. You knew nothing about it at all up to that moment? A. That is right.

Q. You were surprised when Mr. Hoffman made those accusations against Mr. Goldman? A. Between you and me I thought they were immaterial and it didn't register any surprise to me. I simply disregarded it.

Q. You heard Mr. Hoffman testify here? A. I did.

Q. And you heard him testify what he stated before Judge Coxe? A. If Hoffman had said that before Judge

Coxe, Judge Coxe would have sent for a stenographer and 1747
an Assistant District Attorney immediately.

Q. Let us leave out Judge Coxe and what he did, let us leave it out of the picture. A. Certainly.

Q. You don't know what Judge Coxe did in this case? A. No.

The Court: One at a time.

Mr. Fielding: I ask the Government to stick to the question and not give lectures.

Mr. Walsh: I am not giving lectures. He is telling me what Judge Coxe was going to do and as he didn't—

The Court: Ask your question. I will rule on 1748
each question as it comes up. You may proceed, Mr. Walsh.

Q. Did Judge Coxe also tell you in court that because the Goldmans were not present and that they are representing creditors who wanted to do something, that he was going to abide by the creditors' decision? A. That is a double-barreled question.

Mr. Walsh: Well, I withdraw it.

Q. Did Judge Coxe say, "I will not say anything about 1749
the Goldmans, because they are not here at the present time"? A. He did not.

Q. He did say, however, after asking the creditors, "I will abide by your decision," is that correct? A. Yes, sir.

Q. Now you heard Mr. Hoffman testify as to what he told Judge Coxe at that hearing? A. That is right, I heard it.

Q. Well, did Mr. Hoffman tell Judge Coxe what he testified he said from the witness stand? A. No, sir.

Q. What did he tell Judge Coxe? A. Mr. Hoffman ad-

1750 dressed Judge Coxe in the following manner, he said, "Judge, I am attorney for the assignee in a certain transaction, and I don't want to take up your time and the Government's, because I have got everything lotted, and my auctioneer has concluded all the preparations for the sale. The sale was about to go on at 10.30. It was duly advertised, when in came this ex parte order to stop the sale in the interest of creditors, and in the interest of everybody concerned I make an application that I should be permitted, as attorney for the assignee, to continue with the sale."

He also said that were it not for the fact that Morton Goldman tried to dominate this case, no petition in bank-
1751 ruptcy would have been filed, and of course that Hoffman recited Morton Goldman's attempted domination of the case.

Q. Now I show you Government's Exhibit 3, and it is the petition and order in the matter of Paul Hymowitz, and I ask you whether or not that is your signature (showing paper to witness)? A. Yes, sir, it is.

Q. You also signed on April 3, 1937? A. That is right.

Q. And this is an order to stay the sale which was supposed to take place on the 5th day of April, 1937? A. This is a petition and order.

Q. Petition and order? A. You only said order.

Q. Is that what it is? A. That is what it is.

1752 Q. Now at that time when filing the petition, the involuntary petition in bankruptcy, did you intend at that time to stop the sale? A. Certainly.

Q. In other words, these papers were drawn up at the same time? A. Simultaneously; they were executed simultaneously. I don't know when they were drawn up.

Q. Where was this paper drawn up that you call the petition and order? A. The petition and order was handed to me by Mr. Theodore Goldman. I assume that it was drawn up in his office.

Q. Did you read it over? A. I did.

Q. And signed it? A. Yes, sir. 1753

Q. You see here, paragraph 3, "on the 24th day of March, 1937, the alleged bankrupt executed a general assignment." You know that was done? A. That was the truth, that was the fact.

Q. Are you responsible for what is in this affidavit? A. I am certainly responsible for everything that is above my signature.

Q. You say in paragraph 5: "The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon liquidation of the assets in the assignment proceeding." Who told you that? A. Schwartz told me that, and it was corroborated when I had spoken to 1754
Teddy Goldman, to find out his experiences with Hoffman in connection with following up the settlement with creditors.

Q. Well, you say you read the foregoing petition "and know the contents thereof." A. That is right.

Q. "And the same is true of his own knowledge." A. That is right.

Q. You state here, "The attorney for the alleged bankrupt now refuses to make any offer." Did you ask the attorney for the alleged bankrupt to make an offer of settlement? A. No.

Q. Well, that is what is in the affidavit. A. Oh no, it 1755
doesn't say that at all.

Q. Doesn't it? A. No. I had knowledge from my client of the facts in that petition.

Q. So you got this from Schwartz? A. I got it from Schwartz.

Q. Did you tell all the facts in this petition to Theodore Goldman before he drew this petition up? A. No.

Q. Where did he get the information if you did not tell him about what your client had told you? A. I told him what my client had told me, but I didn't—

1756 Q. Well, that is what I just asked you, and you said "No." A. No. You asked me whether I told him all the facts that are contained in this petition and I said "No," and I still say "No." I want to repeat that. I told Teddy Goldman—Theodore Goldman—what my client's experience was, what my experience was, to check it with his client and his experience, and for that purpose to draw the necessary papers; nothing else.

Q. For the stay of the sale? A. We didn't even talk about a stay of the sale on the day before. We simply said "File the petition, an involuntary petition in bankruptcy."

1757 Q. Weren't both these papers drawn on the 3rd of April, 1937? A. I told you before that they were executed simultaneously, when they were drawn—

Q. That is what I mean. A. Yes.

Q. In other words, the involuntary petition was executed, and Government's Exhibit 3, which is the petition and order to stay the sale, was executed at one and the same time? A. I executed both at the same time.

Q. Yes. A. Yes, that is right.

Q. And at that time they had already—Kreiselman and Levy had executed the papers? A. Their signature appeared there.

1758. Q. So did your clients ask you to stay the sale? A. My clients told me to stay the sale, yes.

Q. Now, were you in communication with Theodore Goldman or the firm of Goldman, Malter & Goldman before this petition and order were served on Kolman and Hoffman at the store at 346 Bowery? A. The only communication was that one of their boys brought a certified or a conformed copy of Judge Coxe's order of April 3 to my office. That is the only communication.

Q. Now when did you say that you were down to the store at 346 Bowery? A. On the date of the assignee's sale, some time in June of 1937.

Q. You did not go down on this date? A. No. 1759

Q. Did you ever go down with Mr. Abramson? A. No, sir.

Q. Or with Mr. Lieberman? A. No, sir.

Q. You are positive of that? A. Positive of that.

Q. Do you keep a diary in which you make notations of what you do? A. In 1937 I kept a diary largely devoted to litigation. In other words, court calendars, if I tried a case or if I am supposed to answer a motion or argue a motion, it would be in the diary. From 1938 on, say September, 1938 on, I keep a more detailed diary.

Q. Now after the meeting in Judge Coxe's chambers, or in the court, on April 3rd I believe it was—was it? 1760
A. April 5th.

Q. April 5th, you went over with Mr. Hoffman and Mr. Wishbow to your office, is that correct? A. I think so, yes.

Q. And did you have a conversation with Mr. Hoffman on that occasion? A. Yes, sure.

Q. And did you subsequently and at that time make an appointment for April 7th? A. I don't know whether it was the appointment for April 7th. I told them that I would—I told Mr. Hoffman that I would call in Mr. Morton Goldman to supervise, to work out the mechanics of effectuating a settlement based on the proposition that 1761
the petition should be eliminated, the petition in bankruptcy, and that the assignment should be eliminated or vacated.

Q. Now, between April 5th and April 7th when you had another conversation with Mr. Hoffman, did you see Mr. Morton Goldman at any time? A. I don't think so, no.

Q. Did you know Morton Goldman was mad at Mr. Hoffman before he came into your office on April 7th? A. I assumed that there was unfriendliness between—

Q. Why? A. —between Hoffman and Goldman, yes.

1762 Q. Why? A. Because Hoffman had made this speech to the Judge.

Q. Well, there was nothing improper in that speech, was there? A. Well, I wouldn't say there was anything improper, but it led me to believe this, that Hoffman resented the idea that he was to be—that his assignment proceeding was to be superseded by this bankruptcy and thereby he would be deprived of a fee.

Q. Well, you were the attorney for the petitioning creditor? A. Sure I was.

Q. Goldman had nothing to do with that, did he? A. He certainly did.

1763 Q. Except furnish you, as attorney for the petitioning creditor, another creditor to get the figure of $500; that is all Goldman had to do with it, didn't he? A. I wouldn't say that.

Q. Well, what else did he have to do with it? A. When he recommended to his client that his client should join in a petition of bankruptcy, I take it that he remained professionally responsible to his client to see that the matter was properly handled. The mere furnishing of a name or a client doesn't necessarily relieve his professional obligation.

Q. Why, that was all prepared in the offices of Morton 1764 Goldman and Theodore Goldman, wasn't it? A. What was all prepared?

Q. The petition in bankruptcy, the involuntary petition in bankruptcy. A. I assume that to be the fact.

Q. All right, and also the order and the petition were prepared there too? A. Exactly.

Q. Now I ask you again whether between April 5th and 7th, and prior to the time you called Goldman up on the telephone to come over to that meeting, did you have a conversation with Morton Goldman? A. I know the transcript says I had a conversation with him for an hour

and twenty minutes, but I still say I did not have such 1765
a conversation because if you follow the transcript you will find that the following sentences—questions and answers negative that idea.

Q. You have read the transcript over very carefully? A. I hope I did.

Q. I hope you did, too.

Mr. Fielding: I move that be stricken from the record.

The Court: I will sustain the objection, that is, the remark of the District Attorney is stricken.

1766

Q. Have you had many dealings with Mr. Theodore Goldman prior to this assignment of March 24, 1937, in bankruptcy or insolvency proceedings? A. Two or three occasions maybe in ten years.

Q. Well, when Morton Goldman came to the meeting on April 7th, 1937, was he mad at Hoffman on that occasion? A. I wouldn't like to use the word "mad" to any human being. One is a mad dog. He might have been angry.

Q. Well, I will let you rephrase that question for me. What will you call it? A. Angry.

Q. Well, was he angry? A. Unfriendly, yes. 1767

Q. Was he angry and unfriendly? A. Yes.

Q. And did he continue to be angry and unfriendly to Mr. Hoffman throughout the whole meeting? A. No, his feelings subsided somewhat.

Q. I mean, he remained friendly or he left the room friendly with Mr. Hoffman? A. No, I wouldn't say that either. His unfriendliness may have subsided, but I wouldn't say that his unfriendliness subsided to the point of being friendly.

Q. When did you first find out that Mr. Morton Goldman was unfriendly and angry at Hoffman? A. I knew it—

1768 I assumed that on April the 5th when we went up before Judge Coxe and I saw it in that man's eyes when he came into the office on April 7th.

Q. You assumed that Morton Goldman was angry and unfriendly to Hoffman on April 5th? A. No. I assumed that—

Q. Isn't that what you just said? A. If I said it, let me put it to you this way.

Q. All right, I will let you put it any way. A. I assumed there was some ill feeling between the two of them as the result of the conversation or the speech made by Hoffman to Judge Coxe and also—

1769 Q. We will go just that far. A. All right.

Q. But there wasn't anything that Hoffman said to Judge Coxe that would cause Goldman to be unfriendly to him, according to your version of the story, was there? A. I would say yes.

Q. What was it? A. The fact that Morton Goldman was instrumental in displacing, in superseding his assignment and depriving him of a fee in the assignment proceeding.

Q. Did he say that, too, before Judge Coxe? A. I assumed that.

Q. Well, I am asking you now what Hoffman said before

1770 Judge Coxe that led you to assume that he, Morton Goldman, would be angry with him. A. Sure.

Q. That's the specific question. A. Yes.

Q. Do you understand that, sir? A. Yes.

Q. Now, what is your answer? A. My answer is that Mr. Hoffman told Judge Coxe that this bankruptcy proceeding would not have been born or filed were it not for the fact that Morton Goldman tried to dominate this particular insolvency case, which he resisted and that there was no necessity for a bankruptcy in Hoffman's opinion.

Q. Well, did you communicate that information, what

Mr. Hoffman said, to Morton Goldman, after the meeting? 1771
A. No.

Q. In other words, the first time that you had any conversation with Morton Goldman after the meeting before Judge Coxe was at your office on April 7th, 1937, about 5.15, is that correct? A. I called them up to come over before that.

Q. Yes. A. Yes, that is right.

Q. And did you tell him when you called him up anything about the conversation or what Mr. Hoffman had told Judge Coxe? A. At the meeting?

Q. Yes. A. It—my best recollection is that when the two of them came in and they were angry at one another, 1772
so I wanted—that is, I tried to make peace amongst—between them, and Goldman's attitude was "Why did you have to make any unwarranted statements before Judge Coxe about me?" That is all there is to it.

Q. Who said that? A. It wasn't said in so many words, but that was the drift—

Q. You assumed that was how Goldman felt about that situation? A. No. That was the drift, the atmosphere. That was the actual fact that existed.

Q. Had you communicated at any time prior to that time when you saw Morton Goldman on April 7th what Mr. Hoffman had said in the courtroom before Judge 1773
Coxe? A. I may have left word with Teddy or with somebody in the office that the application was denied and that Hoffman wasn't exactly friendly to Morton Goldman.

Q. You may have. Do you remember whether or not you did? A. I couldn't say.

Q. You don't know? A. I couldn't swear to it one way or the other. I mean, I am only—

Q. Did you tell Teddy Goldman that? A. I couldn't actually reconstruct a thing of this kind.

Q. But at any event we are satisfied now, and we are agreed on this one point, that when Morton Goldman

1774 came into your office at 277 Broadway on April 7, 1937, at approximately five o'clock, he was very mad—he was very angry and unfriendly toward Mr. Hoffman? A. There was an atmosphere of ill will between them, yes.

Q. Do you remember having read—this is Exihibt 20-A—reading from Exhibit 20-A on page 2—do you remember having read the transcript—and you had a copy of this, did you not? A. I did.

Q. You read them over? A. Mr. Fielding and I discussed it.

Q. Together? A. Yes, sir.

Q. And according to Bodinger's notes he said this:

1775 "Hoffman: Did you see Goldman the other day? Did you speak with him?"

Mr. Fielding: Where are you reading from?

Mr. Walsh: Page 2, right in the middle.

Mr. Fielding: What date?

Mr. Walsh: The conversation of April 7th, 1937.

Mr. Fielding: That is Exhibit 21.

Mr. Walsh: 21-A.

Mr. Fielding: Yes, I find it.

Q. Do you remember, or I ask you did this happen:

1776 "Hoffman: Did you see Goldman the other day? Did you speak with him?

"Schulman: For an hour and twenty minutes."

A. It did not happen. Morton Goldman is not so loquacious as to talk for an hour and twenty minutes on anything.

Q. Well, I am not interested at the present time on how loquacious Mr. Goldman is. Did you or did you not—A. No.

Q. Did you speak to him for twenty minutes? A. I don't think so. I don't think I spoke—

Q. Well, did you or didn't you? A. No. 1777

Q. You did not speak to him at all? A. No, sir.

Q. So that is one of the parts that is garbled? A. Call it what you will.

Mr. Fielding: I object to the form of that question.

Mr. Walsh: Well, that is what he said, the reason it was garbled and incorrect.

The Court: I will sustain the objection to that, to the form of the question. You can ask him whether that is true or not.

1778

Q. Is that true? A. That there was such a conversation? No.

Q. So you did not see Morton Goldman? A. I didn't talk to him for an hour and 20 minutes.

Q. Well, did you talk to him for a second? A. I don't think so.

Q. Did you talk to him for two seconds? A. No, sir.

Q. You didn't speak to him at all? A. At all is right.

Q. Did you see him personally between April 5th and April the 7th when he came up to your office? A. Not at all that I can—

Q. Did you speak to him over the telephone? A. I don't think so. 1779

Q. Well, did you or didn't you? A. My best recollection is no.

Q. Did you communicate with him directly or indirectly through his brother, Teddy Goldman? A. I may have left word at the office that Judge Coxe denied the application.

Q. Well, did you or didn't you? A. I think I did.

Q. And with whom did you speak? A. I don't recall—I don't recall.

Q. Was it Teddy Goldman? A. I wouldn't say.

1780 Q. Was it Morton Goldman? A. I wouldn't say.

Q. It was a Saturday afternoon, wasn't it? A. I wouldn't say—no, it was Monday afternoon. April 5th, it was Monday.

Q. Monday? A. Right.

Q. And what time did you get finished with the hearing before Judge Coxe? A. Approximately 12:30.

Q. And so you didn't communicate with Morton Goldman from April 5, 12:30, until five o'clock on April the 7th; is that your testimony? A. Other than to leave word that Judge Coxe denied the application of Mr. Hoffman.

Q. Well, with whom did you leave that information?

1781 A. I don't know. It could be—

Q. Was it Teddy Goldman? A. It could be with the telephone operator; I don't know.

Q. I know it could be anything, Mr. Schulman. I want to know what you remember. A. I can't remember that little detail.

Q. But you say Goldman came into the office and he was angry and unfriendly toward Hoffman? A. Exactly, on April—

Q. Well, do you know where Mr. Goldman got the impression or do you know where Morton Goldman heard what Hoffman said before Judge Coxe? A. I don't know.

1782 Q. You don't know that at all? A. No.

Q. And you did not communicate what he said directly or indirectly to Mr. Morton Goldman, is that correct? A. I can't—the correct answer is I can't recollect any such conversation between myself and Morton Goldman or Teddy Goldman.

Q. Now reading from Exhibit 21-A in evidence, do you remember, Mr. Schulman, after Mr. Hoffman had spoken, when you said: "All your conscientiousness won't help you anything."

Mr. Fielding: What page is that on?

Mr. Walsh: That is on page 1. 1783

Q. Is that true and did you say that? A. I don't remember ever having made any such statement.

Q. Well, do you deny that you made it? A. If I don't remember it I can't admit it.

Q. Well, I did not ask you if you admitted it. I asked you if you deny making it. A. I would deny making it.

Q. All right. You deny that? A. Yes, unless you should tell me in the light or in the context of other conversation it may have been mentioned in it.

Q. I am sure that Mr. Fielding will be glad to accomodate you there. A. He can't create context— 1784

Mr. Fielding: I move to strike that out.

The Court: I will sustain the objection.

Mr. Walsh: That is proper, that he can take him on redirect.

The Court: I know, but you needn't make any side remarks about what Mr. Fielding will do. Make the objection and I will sustain it.

Mr. Walsh: Well, I apologize if I overstepped the bounds of propriety.

The Court: I sustain the objection to exclude the remark of the District Attorney that "Mr. Fielding will take care of it.". 1785

Mr. Walsh: I assumed that he would take care of it on redirect.

The Court: Very well, you may proceed.

Mr. Fielding: I will take care of my own case.

The Court: Proceed.

Q. Do you remember who said this, at the meeting of April the 7th, 1937:

"The auctioneer charges 10 per cent"—

Mr. Fielding: What page?

Mr. Walsh: Page 1 yet.

786 Q. —"but the other five didn't go to you personally. Will Endicott-Johnson give you any" and then something was missed, and then I am going to skip something—"it's a practical proposition. You're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent."

Do you remember having said that or do you remember having heard Mr. Hoffman say that?

Mr. Fielding: Now at this time I object to the question because it isn't a proper reference of 21-A, if I am reading on the right page, page 1. It starts off with:

787 "Hoffman: The auctioneer charges 10 per cent."

Mr. Walsh: And if my memory serves me correctly, I asked him if he remembers whether or not Hoffman or he said that.

Mr. Fielding: You asked him if he said that.

Mr. Walsh: Or Hoffman.

The Court: Well, I will sustain the objection to the form of the question in view of the fact that it is not clear, so you can re-ask your question.

Q. Do you remember Hoffman saying this or did you say it: "it's a practical proposition. You're a crook so long
788 as you don't give money, whether it's 90 per cent or 20 per cent."

Do you remember anything said about that? A. I wouldn't attribute that statement to myself or to Mr. Hoffman.

Q. You would to Mr. Hoffman? A. I would not, I said.

Q. And you never said it? A. No.

Q. And was there any conversation to that effect, that unless the creditors got 100 per cent, why, "you're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent."

Did you have any discussion about that, concerning that

with Hoffman? A. There may have been, but I can't recall every conversation. 1789

Q. Do you deny having such a conversation? A. I can't admit and I can't deny.

Q. You have no such present recollection? A. No.

Q. But you do admit reading this over? A. Yes.

Q. And you tried to recall, to remember that? A. I taxed my brains as hard as I could. Maybe they are not good enough.

Q. Do you remember whether or not in the conversation on April the 7th you said this—

Mr. Walsh: I am now reading from page 2, Mr. Fielding. 1790

Q. (Continuing) "Not only that, the man still has debts of five hundred or one thousand against him. He will never get a loan"—something was missed—"I know my end of it. I'll tell you why I know a little bit better than you."

Do you remember having said that? A. Yes, some vague recollection about that.

Q. What did you mean when you said, "I know my end of it"? A. Well, I know my end—

Q. "of it"? A. A sutuation—

Q. Quote—what do you mean by that? A. Will you let me explain? 1791

Q. Yes, surely. A. I know my end of the situation, that if a man was in business and then he goes out of business and he leaves unpaid debts, if he wants to re-establish himself in business, if he wants to go to the Morris Plan, to the National City Bank or to any one of these lending institutions, that he would have very great difficulty in getting a loan, in view of the fact that there are unpaid obligations, and I will tell you why I know it: From time to time these institutions or their attorneys called me up and asked me, "Mr. Schulman, is the judgment that you

1792 obtained in favor of X against Y, is it paid, and we are asking this in connection with a loan that we are about to make," and if my answer, let us say, is unsatisfactory, that the claim has not been paid, then the borrower may experience difficulty in getting a loan. That explains that.

Q. So in other words, you're a crook if you pay 90 or 20 per cent; you have to pay $100? A. I didn't say anything of that kind.

Q. Does that refresh your recollection, perhaps, that you may have said? A. Not at all.

Q. Now the next— A. And as a matter of fact, the minutes so attribute that statement to Hoffman; not to
1793 me.

Q. I know that. A. All right.

Q. I asked you— A. You are trying to create the impression that it is attributed to me.

Q. I am not trying to create any impression, Mr. Schulman. A. All right, I am sorry.

Q. And the next thing is this: "Hoffman: Did you see Goldman the other day, did you speak with him?

"Schulman: For an hour and 20 minutes."

Do you remember that? A. Are there any dashes after that "hour and 20 minutes"?

1794

Q. No, there is a period there. A. What follows after the "hour and 20 minutes"?

Q. Then there are some dashes about it—

Mr. Fielding: No.

Q. "Hoffman: You didn't speak to him at all about it?

"Schulman:" —and then you didn't say anything else:

Mr. Fielding: He said something but they didn't get it.

Q. They didn't get it. 179

Mr. Fielding: All right.

Q. Did you or did you not say that, or does that refresh your recollection? A. Say what, dashes?

Q. That you spoke to Goldman for an hour and 20 minutes. A. I denied that before, Mr. Walsh.

Q. You did call Mr. Goldman up to come over there? A. Oh yes.

Q. And he subsequently did appear at the office? A. Exactly.

Q. And that was Morton Goldman, is that correct? A. That's right; April 7th you are talking about? 179

Q. April 7th. A. Yes, yes.

Q. And was Mr. Kandell supposed to appear at that time, too? A. Not that I know of. I wouldn't call him.

Q. Well, did Mr. Morton Goldman want to be the boss in this particular involuntary petition in bankruptcy? A. I wouldn't say that he wanted to be the boss. I looked up to him.

Q. He knew the mechanics of it, as you said, is that correct? A. I looked up to him as a more experienced lawyer in these matters than I was and if he took the helm of the ship I was perfectly satisfied.

Q. Do you remember on direct examination you were 179 asked this question: "What you did"—and you—"were going to take care of the petitioning creditors; Morton Goldman was going to work out the mechanics of it."

Do you remember testifying on direct to that question and giving that answer? A. No—this morning you mean?

Q. Yes. A. No, I don't remember that.

Q. You don't remember? A. No.

Q. Well, is this correct, and was this said by yourself: "If you hadn't come up"—

Mr. Fielding: What page?

1798 Mr. Walsh: Page 3.

Q. (Continuing) And then there are some dashes—"you know"—and this is what I am specifically calling your attention to—"this Marty Goldman is smarter than his brother Teddy Goldman."

Q. Is that correct? Did you say that? A. That was always my impression, and I may have said it.

Q. I mean so far as we are concerned now, we agree that you may have said this particular thing on April the 7th at this hearing, isn't that right? A. That's correct. It's quite possible that I did.

1799 Q. Then Hoffman said this: "You know this fellow Teddy Goldman was up my office twice. This Martin Goldman looks to be a sharp guy."

Do you remember Mr. Hoffman saying that? A. I could only answer you in this fashion: There were uncomplimentary remarks passed between—that is, one about the other, with respect to Hoffman and Goldman, Morton Goldman, yes, and if that's in there it may have been there—it may have been said.

Q. Well, do you remember saying this—you:

"Schulman: They see a damn case and they won't let go no matter how the creditors will benefit by it."

1800

A. I would attribute that to—

Q. (Continuing) "Some individuals can't see them get the benefit." A. I would attribute a remark like that to Mr. Hoffman. I don't think I said that.

Q. Well, was it said? A. It may have been.

Q. It may or may not have been; do you remember? A. Part of the uncomplimentary nature of the discussion about—relative to Martin Goldman and Hoffman.

Q. You did not say anything like that? A. I don't think so, no.

Q. Well, Hoffman never had any experience with the Goldmans before, but you did. You have been associated with other bankruptcies, haven't you? 1801

Mr. Fielding: I move—I object to the question.

The Court: He is asking him a question. He may press him.

A. I never had any unpleasant experiences with Goldman.

Q. Well, did you say that: "They see a damn case and they won't let go no matter how the creditors will benefit by it." A. I think that was Mr. Hoffman's, all right.

Q. "Some individuals can't see them get the benefit"? 1802
A. I think that is Mr. Hoffman's ideas and his work.

Q. Was that said on that occasion? A. It may have been.

Q. So far as the second thing, we agree that may have been said on that question? A. That is the second thing I said may have been said on that occasion?

Q. Well, do you remember whether it was said or wasn't said? A. General, uncomplimentary remarks. If you think that I am going to remember them in 1940, what was said in 1937, when it is trivial and nonsensical to me, I don't go to sleep with that kind of nonsense.

Q. You don't think this is nonsensical, what you said on 1803
these occasions? A. Some of it might have been. Some of it might have been—again, a lot of it might have been nonsensical.

Q. Well, I will confine my questions to what I think is not nonsensical. A. Right.

Mr. Fielding: I move to strike that out, the question.

The Court: Yes, I will sustain the motion.

Q. Do you remember—

Mr. Walsh: On page 3.

1804 Q. (Continuing) That after Hoffman said, "I could check and make sure, darn sure that they wouldn't do any guzzling. How do you fellows know how?" And then it says:

"Schulman: After you know the tricks you know how it works. They can't pull any tricks on me."

Do you remember having made that statement? A. I think so, yes.

Mr. Fielding: Pardon me?

Q. What is your answer?

1805 Mr. Fielding: May I ask that the question include the statement which immediately follows. That will make some sense out of it.

Mr. Walsh: I read that.

Mr. Fielding: No, the next one, that you did not read.

Mr. Walsh: What Hoffman said—do you want me to read it now?

Mr. Fielding: Yes. "I know better."

Mr. Walsh: Oh, sure.

Mr. Fielding: Then it is understandable.

Q. "I know better. In this case there was 360 lots and 1806 it has to be a bid on each lot, and down at the sale I keep checking all the bids for each lot," dashes, "suppose they tell you here?"

Mr. Walsh: Is that it?

Mr. Fielding: Yes.

Q. Now at this time you were speaking how auctioneers could do certain things, is that correct? A. Hoffman raised—Hoffman raised and I—those words attributable to me, I think are probably attributable to me.

Q. That you know the tricks about the auctioneers? A. I know some of them.

Q. From your experience? A. Yes. 1807

Q. And unless you do watch the auctioneers they may throw a couple of lots in and sell them on you, is that correct? A. No.

Q. Or I will withdraw that. Do you have to watch auctioneers quite closely? A. It all depends who.

Q. Well, I will say auctioneers generally? A. No, I wouldn't say that about a business or profession; no.

Q. But it is well for very person to be right there and see that each individual lot is sold, is that correct? A. Well, sold probably, yes. That's good business; that's good sense.

Q. I think so. "After you know the tricks you know how it works. They can't pull any tricks on me." A. That is right. 1808

Q. What tricks could they pull on you? A. Let me give you an illustration—

Q. I would like it. A. Expressly, an auctioneer may if he sees friends of his among the buyers, will knock down a piece of merchandise quickly without giving the rest of the buyers an opportunity to bid.

Q. Yes? A. The ultimate result of things of that kind is that the total realized from that sale is less than what it should have brought. That's one of them. Sometimes an auctioneer puts in, let us say, 13 shirts or 15 shirts and he marks his lot that there are 12 shirts there, and then if he does a thing of that kind, then of course he sells more merchandise than—he gets a smaller price than what he should get. Those one or two of the things. 1809

Q. Do you know many more tricks? A. Not very many more.

Q. Well, tell me more. A. I don't think I can, I am sorry.

Q. Well, tell us a couple more. A. I don't think so. I don't know any more.

1810 The Court: Very well, gentlemen. We will take a recess at this point until 2:15.

Mr. Corbin: Will your Honor direct the witness Rich to return after recess?

The Court: Yes. The witness Rich will report back here at 2:15 and remain until you are excused by counsel for the defendants because if you absent yourself and should be called—where is Rich? Is Rich in the corridor?

(No response.)

A Voice: He just stepped outside.

1811 The Court: Well, it won't be necessary. Some of you tell him that if he absents himself again and he is not here when he is called he will be punished or he will at least be subject to punishment.

Mr. Corbin: Here he is.

The Court: Very well.

(To Mr. Rich) You be back here at 2:15 and remain until you are excused by the parties who examine you. Otherwise you might get into trouble.

(Recess to 2:15 P. M.)

AFTERNOON SESSION.

1812 JACOB P. SCHULMAN, resumed the stand.

Cross examination continued by Mr. Walsh:

Q. Do you remember reading over Bodinger's notes, Mr. Schulman, at the bottom of page 4:

"Schulman: As I told you before, the only thing I'll tell you. They are making money quicker. Ordinarily, the money he was getting, only ultimately this guy"—then there is same hiatus, something left out—"I'm convinced that the guy honestly means that the brothers were going to get, as he told me

last time he had some kind"—and something left out—"he told me not to be such a"—something else left out—"I told him over here, whether you like the setup or you don't like the setup, he shouldn't hog the whole picture himself." 1813

Do you remember such words to that effect being said on April 7th? A. No, sir.

Q. Do you remember who the brothers were that were mentioned by yourself in this particular conversation? A. No, sir.

Q. And at the office of Goldman brothers? A. I don't think so. 1814

Q. "In view of the fact he should not hog the whole picture himself." A. Might have been talking about an entirely different case.

Q. You were there. I was not there. I would like to get the picture. A. Frankly, it is an incomplete context you have given me.

Q. I only want to give you an opportunity to explain what these uncompleted sentences are.

Mr. Fielding: I move to strike that out.
The Court: I overrule the motion.
Mr. Fielding: Exception. 1815

A. I cannot make any sense out of that portion which you read.

Q. Let me read this one portion, once more, "he shouldn't hog the whole picture himself." Do you remember words to that effect being said? A. No, sir.

Q. Would it refresh your recollection, if you said that before Judge Coxe on April 5th, that you were not interested in the domination of Morton Goldman in this picture and let Hoffman and Goldman straighten this thing out themselves, would that refresh your recollection, so you could explain whom you meant when you said "he shouldn't

1816 hog the whole picture himself"? A. Judge Coxe didn't say that Goldman and Hoffman should straighten out this affair.

Q. I don't think I did say that. A. I thought you did.

Q. When you were before Judge Coxe you told Judge Coxe that you were not interested in the personal disputes between Goldman and Hoffman? A. That is right.

Q. You were not interested in whether Goldman was trying to dominate the picture? A. I didn't say that.

Q. This is your testimony on direct examination this morning, Mr. Schulman, it is on page 558 of the record. You were asked preliminarily the question, "What happened
1817 before Judge Coxe?" and then you make that statement and you say here, "I said to Judge Coxe the following: I said, 'I am not interested in anybody's attempted domination of the case at the creditors' meeting or otherwise, and I am not interested in any personal disputes between Hoffman and Morton Goldman.' I said, 'But what I am interested in is that creditors' wishes should be respected so far as they may be properly respected,' and I said to Judge Coxe this: 'So far as the additional expense of advertising'"—do you remember testifying to that this morning? A. That is right.

Q. Does that refresh your recollection as to whom you
1818 meant by "hogging the whole picture"? A. It may not have had the slightest connection between one and the other.

Q. Where did you get the impression when you said before Judge Coxe that Morton Goldman was trying to dominate the case at the creditors' meeting and otherwise, and that you were not interested in the personal disputes between Hoffman and Goldman? A. From what Mr. Hoffman had told Judge Coxe, it transpired at the creditors' meeting.

Q. Now do you remember, Mr. Schulman, you were in

court when Mr. Hoffman was being examined by Mr. 1819
Corbin—this appears on page 205 of the record:

"Q. Now will you tell us what you said to Judge Coxe of this court on that occasion with reference I mean, of course, to Morton Goldman's conversation? A. I told him in substance that we had had this meeting over at the Dry Goods Association, that Morton Goldman of the firm of Goldman, Malter & Goldman had made a proposition to me in the presence of Mr. Wishbow to the effect that he wanted to get a private buyer for the stock in question." Do you remember Mr. Hoffman saying that before Judge Coxe that day? A. Not at all.

1820

Mr. Fielding: I object to it.

Mr. Walsh: I will come to that.

The Court: What is the question?

Mr. Corbin: I don't think he ought to use words that we cannot understand.

Mr. Walsh: That is the reason I explained it to you, Mr. Corbin.

Mr. Corbin: The question called for an explanation. I would have to be an interpreter to follow that.

The Court: Well, I think I understand it. I will overrule the objection. The question was does 1821
he remember Hoffman having said that to Judge Coxe.

Q. Do you remember that? A. I remember distinctly that Mr. Hoffman—

Q. I ask you do you remember what I just read to you? A. I am trying to answer your question.

Q. Well, if you will say yes or no, then you may give any explanation you want. A. My answer is Mr. Hoffman made no such statement, and I need to make no explanation.

Q. In other words, you don't remember Mr. Hoffman

1822 saying this before Judge Coxe? A. Definitely you are wrong there.

Q. Did he make such a statement before Judge Coxe? A. Definitely no.

Q. In other words, your memory is that you are quite sure that he didn't say this at this time? A. Exactly, neither did Mr. Wishbow.

Q. Did he say anything to this effect, did he say this, "and that they wanted to split a certain amount of money which they would get from this private buyer"? Do you remember him saying that before Judge Coxe? A. I remember that he didn't say so.

1823 Q. "And the split would be amongst Goldman, Kandell and myself and the auctioneer, and the like." Do you remember him saying that before Judge Coxe? A. I remember he didn't say so.

Q. "I also told him that they had tried to—they told me they were going to try to arrange for a settlement of 40 per cent for creditors." Do you remember Mr. Hoffman saying that before Judge Coxe? A. No, sir.

Q. He didn't say anything about any settlement of 40 per cent before Judge Coxe? A. No, sir.

Q. "And that the difference between the amount that would be required to straighten out that 40 per cent
1824 settlement plus some additional moneys for administration fees, and the amount that they would actually get from this private buyer would be split amongst these parties and that the true amount of the sale would not be disclosed to the creditors." Do you remember Mr. Hoffman saying that before Judge Coxe? A. No such statement made by Mr. Hoffman on April 5, 1937.

Q. Now what did Hoffman say before Judge Coxe?

Mr. Fielding: I object to that on the ground that he has gone over it four or five times, it is repetitious.

Jacob P. Schulman—for Defendants—Cross.

The Court: I will overrule the objection. On cross-examination the attorney is allowed quite a wide latitude. I will let him ask it. I overrule the objection. 1825

Mr. Fielding: Exception.

A. Mr. Hoffman began his argument on his application before Judge Coxe in the following manner: He said he was the attorney for the assignee, that the assignee had completed lotting, he had advertised the sale scheduled for that morning for 10:30, that there were buyers at the place, and he wanted leave of the Court to proceed with the assignee's sale, and that if the sale was adjourned or stayed, creditors would suffer because there would be additional expenses involved. 1826

And then he further said that in this matter no bankruptcy petition would have been filed were it not for the fact that Morton Goldman tried to dominate the proceedings at the creditors' meeting, which he had opposed, and then I answered those arguments before Judge Coxe.

Q. What did you say, again? A. I said to Judge Coxe, "So far as the expense is concerned, there is not or won't be any additional expense to talk about, because the official auctioneer of this company, of the Underwriters Salvage Company, and the official auctioneer, as I understand, of this Court—where they come in and sell assets which have been covered by an assignment for the benefit of creditors before, and where the assignor's auctioneer had done some work in lotting and preparting for sale, that even though the Underwriters Salvage Company may duplicate that work, there won't be and there is not any duplication of expenses for the same item." So I said, "That disposes of the argument so far as the expenses are concerned." 1827

Now with respect to any particular argument that he may have had or any disputes he may have had with

1828 Morton Goldman, with reference to the domination of the case one way or the other, I told the Court I had no interest in the matter but only in the interest of the Court.

Q. In other words, you told the Court you had absolutely no interest in the dispute between Goldman and Hoffman, is that what you said? A. Sure, I said it.

Q. And that is what you told Judge Coxe? A. Exactly. And I also told Judge Coxe that Hoffman apparently on the surface had agreed to permit creditors to examine the stock and effectuate a settlement on the basis that creditors would be permitted thereby to make appraisals and bids, so that they should get a
1829 quick settlement, and he ostensibly agreed to that, and when it came time to accomplish or cooperate to that end with the creditors, we could not get him on the telephone, that he would not telephone back, and that under such circumstances the bankruptcy was forced upon the creditors. And I told Judge Coxe further that the creditors' wishes were that the assignment be vacated, that the bankruptcy trustee be vacated, and that the creditors get a real honest opportunity to make a settlement on the basis of which I just outlined and if that could be accomplished, that would be fine.

On the other hand, if Mr. Hoffman continued to be
1830 obstreperous and would not cooperate to that end, then we would have to go through the regular routine of bankruptcy.

Q. As a matter of fact, if Mr. Hoffman had cooperated with you, you would never have filed a petition in bankruptcy? A. The creditors believed that there was a lack of cooperation.

Q. You were going to have a sale on the 5th and the creditors would have gotten everything they were entitled to on the sale on the 5th. How were you going to save creditors by throwing them in bankruptcy and getting additional expenses? A. May I answer that?

Q. That is the question. A. Fine. Hoffman wanted and 1831
insisted on going through with the assignment of sale which meant incurring a disproportionate amount of administration expenses, that is always experienced in assignment proceedings, and ultimately the creditors wind up with 10 or 15 per cent, if they get that. On the other hand, the creditors didn't want that procedure or plan to go through. They wanted to eliminate as much as possible overhead or all administration expenses as much as they could, and their plan was, and that was their instructions to me and that was their request of Hoffman, not to go through with the assignment proceeding but, rather, to sell it for the best price— 1832

Q. Instead of assignment, you mean the bankruptcy proceedings—

Mr. Fielding: Let him go ahead and finish the answer.

A. (Continuing) So instead of employing assignment proceedings, it meant incurring a disproportionate expense. For instance, like this $1700 of gross receipts, in order to distribute to the creditors or thereabouts round figures, they wanted another plan to be employed.

Q. Who did? A. The creditors did at the meeting. They 1833
wanted the stock to be sold to the highest bidder.

Q. And the stock would have been sold to the highest bidder on April 5th? A. Yes, sir. You have 10 per cent auctioneers' expenses, you have labor and advertising, which you don't have under the creditors' plan; you don't have $300 for an attorney for the assignee and you don't have $80 for assignee's commissions, and you don't have $300 for City Sales Tax when you have a private sale. What the creditors wanted was a plan that would eliminate all that, except the fee of the attorney representing the debtor, and it was always understood that they would

1834 like to effectuate a private settlement, within a reasonable fee allocating or allotting to him that—.

Q. In other words, you would eliminate the auctioneer's expense and the lotting, and you had $60 in mind, and eliminate a lot of other things in commissions, in that plan, without all these expenses, rather, to eliminate those expenses that found their way in and to obtain a greater dividend for the creditors? A. That was the difference between the creditors' wishes and Hoffman's wishes.

Q. Well, Hoffman had already incurred an expense of $88 with an auctioneer for lotting and making an appraisal on it? A. If he did, fine.

1835 Q. You knew that? A. I didn't know that.

Q. You had to pay $35 even to file a petition in bankruptcy? A. Right, assuming I was the attorney.

Q. Let us not assume anything. Now may I ask you another question? A. I would like to answer this one first.

Q. All right. A. You already had incurred lotting and advertising expenses so far as the particular auctioneer was concerned, and you didn't have to incur the expenses of advertising again, if you only adhered to the creditors' wishes. You didn't have to employ all these men to complete their lotting if you had adhered to the creditors' wishes.

1836 On the other hand assuming, let us say, that all this lotting had been done and the expenses had been paid, if you had stopped at that point, the auctioneer's expenses would only remain at $88 instead of $350 as they were ultimately, or to make myself plainer, Mr. Walsh—

Q. Thank you. A. (Continuing)—an auctioneer in an assignment proceeding generally gets 10 per cent of the results from his auction sale. Let us say the amount was $1500, then he gets $150 of it. Now if you adopted the plan that the creditors wanted, that $150 would never have been incurred, and so on down the line.

Q. Are you finished? A. Are you satisfied with the completeness of my answer? 1837

Q. Are you satisfied? A. I am.

Q. As a matter of fact, the different expenses had been already incurred when you filed the petition on April 3rd? A. Yes, sir, but it should not have been.

Q. It already had been. You step in with bankruptcy, and you are going to save the creditors money so you throw 35 bucks on their backs—

Mr. Fielding: I don't understand what "30 bucks are."

Mr. Walsh: I will make myself clearer. I meant $35. 1838

A. No. Your question, Mr. Walsh, needs this answer—

Q. I don't want "needs this answer." What is your answer? A. I am trying to give it to you.

Q. Thank you. A. The creditors felt that Hoffman had repudiated and failed to keep his understanding and agreement with them to effectuate a private settlement where they would have gotten 40 to 50 per cent more on the dollar than they did. They wanted those assets to be handled in the regular Bankruptcy Court. On other hand, if he would rather consider himself and say to the creditors, "All right, I will now adhere to your plan, we will vacate the bankruptcy," there would be just the $35 left, so it is only $15 expenses, and we will eliminate assignment proceedings, so we don't have any further expenses, and then yield the creditors as much as the picture warrants. 1839

Q. All of these expenses had been incurred before you stepped into the picture, the advertising and the lotting and the rent up to and including April 3rd; is that the fact? A. No.

Q. They were fixed charges, were they not, the ad-

1840 vertising, they had advertised in the papers; the assignee would have to pay that, wouldn't he? A. Yes, sir, the assignee would have to pay it. He would also have to pay the rent up to and including April 5th, yes, sir.

Q. And he also would have had to pay the disbursements of the auctioneer? A. Just the disbursements, the expenses and labor charges.

Q. In other words, he had incurred that right up to there? A. I don't think I am making myself quite clear.

Q. Wait a minute. I am asking you a couple of questions. So you told Hoffman you wanted a private sale? A. I didn't tell him any such thing. The creditors told him.

1841 Q. And everything you told this Court and the jury today, the creditors told you that? A. Exactly. Everything they told me.

Q. What you have just told us? A. What I have testified the creditors told me, that is correct, but there is one point in your question about labor charges and advertising that I would like to clear up.

Q. Go ahead. A. If you are going to have a sale on April 5, 1937, you generally insert an advertisement a day or two before. If Hoffman had adhered to the creditors' wishes on March 25, 1937, he would not have incurred the expense for advertising.

1842 Further, if he had adhered to the creditors' wishes on March 25, he would have stopped whatever labor charges that were incurred after that, so that the creditors should be satisfied, but if they had been incurred they had to be paid. That I agree with you on.

Q. I don't want you to agree with me. A. But I am agreeing.

Mr. Fielding: I move to strike that part out.

The Court: Yes. Motion sustained to strike that out.

Q. When you put Hymowitz's estate into bankruptcy did you know at that time that his mother and sister had claims of $1900 against the estate? A. Some of the creditors told me that some mention had been made of $1200. I think it was all personal loans. 1843

Q. That is a valid claim, if they can prove it? A. But there were no books or records displayed.

Q. Didn't you know that on April 3rd? A. Yes, sir.

Q. Who told you that? A. Mr. Schwartz. There were no books or records that the man had that were furnished to the creditors.

Q. Did you tell the Goldmans there were no books? A. They knew themselves. 1844

Q. Who told them? A. One was present at the meeting.

Q. Who? A. Morton Goldman.

Q. Did you discuss with Morton Goldman anything prior to the time you filed the petition in bankruptcy? A. I told you what I discussed.

Q. I asked you whether or not you spoke with Morton Goldman or who was present at the meeting. A. No.

Q. You did not? A. No.

Q. In the event that these claims of the mother and sister of Hymowitz were allowed, then the creditors would have gotten $1900, less their proportionate share. In other words, the $1900 would have gone in as a general claim, is that correct? A. If a claim is allowed in bankruptcy, it is allowable, and everyone gets a dividend. I say on that I agree with you. 1845

Q. And consequently in bankruptcy, with the amount of money that the mother of Hymowitz claimed, plus the amount his sister claimed, that would also go in as a general claim against the estate; is that correct? A. May I answer it?

Q. Is that correct? A. It is not correct.

1846 Q. What is correct? A. Nine out of ten times—

Q. I want this case. That is all we are interested in. A. In this particular case I have no knowledge as to the lack of validity or validity of the personal loans.

Q. I understand that as of April 3, 1937, when you filed this, you had heard that there were claims outstanding against the estate of $1900, is that correct? A. No.

Q. How much? A. I heard that claims were being asserted or were in existence in favor of the family which we generally discount 100 per cent.

Q. Did you hear that there were claims being asserted by the family in the amount of $1200? I will take your
1847 figure. A. It is not a question of the figure.

Q. How much did Schwartz tell you was the amount of the asserted claims? A. That there were in existence personal loans of $1200. I did not take those claims seriously.

Q. Because of your experience in the bankruptcy field? A. No, sir.

Q. Whether you took them seriously or not on April 3rd, you knew if substantiated or proved, they would go in as a general claim against the estate; is that true? A. Certainly.

Q. And consequently wipe out part of the profit or dividend for the creditors? A. The dividend would be so much
1848 less.

Q. Substantially less? A. So much less.

Q. And yet you still filed the petition in bankruptcy? A. And I will tell you why, if you want to know the reason. Q. I want to give you every opportunity that you want. A. May I give the reason?

Q. Surely. Go on and give it to us. A. A lot of lawyers when they call creditors' meetings—

Q. Can you confine yourself, however, to this case? A. Yes, sir. It has an application to this case. You find many times a debtor or an attorney asserts personal loans for

which there is no foundation in fact or truth. There is 184
no check in evidence. There is no bankbook in evidence shown to them for the purpose of having more or less coercion of the creditors to do as the debtor or the debtor's attorneys want them to do. We find from general experience—

Q. Who do you mean when you say "we"? A. I do; others do.

Q. Does Goldman do that? A. I don't know what he does. We find from general experience when we come to the Bankruptcy Court they file claims whether legitimate or not, but the trustee has a right to question them and 185
then expunge them. So if there is no evidence to substantiate a claim, it is the easiest thing to assert one between a mother and daughter—they are generally expunged, if filed at all. On the other hand, where personal loans do exist honestly and legitimately, I don't see why they are not entitled to the same proportionate share as the creditors' claims themselves.

Q. I don't either.

Mr. Fielding: I move to strike out that remark.

The Court: Yes. Motion sustained.

Q. Are you finished with your answer? A. I am. 185

Q. Now when did you first come to the conclusion that Mr. Morton Goldman was angry and unfriendly with Mr. Hoffman?

Mr. Fielding: I object to the question. I think that is the tenth time that has been asked.

The Court: Yes, objection sustained. That has been referred to before on cross examination.

Q. Do you remember at this meeting on April 7th that you had your secretary call Mr. Goldman up? A. I generally called my own numbers in those days.

1852 Q. Did you call Mr. Goldman up on that occasion? A. I must have.

Q. And what did you say to him over the telephone? A. I asked him to come over because Judge Coxe asked Mr. Hoffman and myself to try to adjust this matter.

Q. This is two days after, isn't it? A. That is right.

Q. Why didn't you call up on April 5th, right after the hearing before Judge Coxe? A. It was likely—

Q. Did you call him up on April 5th after Judge Coxe asked you straighten it out? A. No.

Q. So you waited until Hoffman was there at five o'clock, two days after? A. Hoffman said that he could not remain,
1853 that he wanted to make an appointment for another day. I was ready.

Q. In the interim you didn't tell Mr. Morton Goldman that Judge Coxe wanted you to straighten it out? A. No.

Q. So this was the first time, when you called him up on the telephone on April 7th after the hearing before Judge Coxe, that is the first time you say you spoke to Morton Goldman? A. That is the first time I remember speaking to Morton Goldman.

Q. Has anything that I said refreshed your recollection? A. No.

1854 Q. What did you say? A. I asked him to call, to come over to the office. He said, "I don't want to be bothered with the matter. I am through with it." I said, "Please come over because Judge Coxe recommended that this matter be settled and if we are going to do anything to settle this matter we want you to come over, and you are the attorney for a large creditor and I have creditors myself, so please come over."

Q. Is that all you said? A. Practically.

Q. Is there anything else you can remember at this time that was said to him? A. No, sir.

Q. Did Mr. Goldman seem angry over the telephone when you said that to him? A. Not to me, no.

Q. Then Mr. Goldman subsequently did appear at your office, is that correct? A. Yes, sir, that is right. 1855

Q. Now on page 5, do you remember that Mr. Bodinger said he took down this language, when he was hearing over this microphone and this crystal microphone, just prior to that time Mr. Goldman did certain things that are left out—"never made a deal with him in my life and"—other things that were left out—"(At this point all the parties started arguing and speaking at once.)" And Hoffman said, "You know goddam well whatever I told the judge was true."

Do you remember that being said in your office? A. All of that which you read?

Q. I ask you this question: Do you remember whether or not Hoffman said to Goldman, Goldman was present at this time, "You know goddam well whatever I told the judge was true." 1856

Do you remember that? A. Some such statement.

Q. Did he say that in your office? A. Yes, sir.

Q. And was Goldman there at that time? A. Yes, sir.

Q. Goldman said, "I know damn well it wasn't the truth."

Do you remember him saying that? A. Something like that.

Q. Do you remember where Mr. Goldman got that information? He was not there before Judge Coxe? A. No.

Q. You didn't tell him? A. No. 1857

Q. Was Levy there that day before Judge Coxe? A. No, sir.

Q. That is his client? A. That is his client. Levy was not there.

Q. Did Morton Goldman ever tell you where he found out what Mr. Hoffman told Judge Coxe? A. It may be that I said to him when he came in that Hoffman said to the judge, "You tried to dominate the case one way or the other." A third party seems to be speaking and could not be definitely identified.

1858 Q. Was this the time you all had an argument as soon as Goldman came in? A. No, frankly not.

Q. At this point it says, "All the parties started arguing and speaking at once," and Hoffman said what I just said. "You know whatever I told the judge was true." A. There was no mention made at that time of Hoffman telling the truth of any deal.

Q. What conversation did you have with Goldman just prior to the time Hoffman said, "You know whatever I told the judge was true"? A. I might have said, and I very likely did so and I am giving you my best recollection—

Q. That is all we can expect at this time. A. (Continuing)
1859 —that Hoffman said something about, "You tried to dominate the case. Otherwise there would be no bankruptcy." Morton Goldman, of course, resented it.

Q. Who did? A. Morton Goldman.

Q. Is that the point where Goldman became angry and unfriendly to Hoffman? A. No. Mr. Morton Goldman was angry from the moment he stepped in my office, not angry with me but Hoffman.

Q. You didn't know why Goldman was angry with Hoffman at that time? A. I could understand.

Q. Why? A. He was supposed to cooperate with the creditors by having the door kept open, by securing appraisers and buyers and accepting the bids and working
1860 to a settlement that he apparently committed himself to or agreed to at the meeting, and then Hoffman ran out of the proposition, and that might have caused some resentment in Goldman's breast.

Q. But, rather, that he didn't allow the creditors to go down there, is that what you think? A. No mention at that time by Hoffman before Judge Coxe or before this trial that Hoffman said Morton Goldman made some kind of a secret or fraudulent deal one way or the other. That is news to me.

Q. Since the newspaper notices appeared? A. No, sir, since Hoffman testified in this court. 1861

Q. Well, then you were present there and Hoffman said you were there. You heard him tell Judge Coxe during that 45 minutes? A. Not there 45 minutes.

Q. How long were you there? A. At best 15 or 20 minutes.

Q. You can say an awful lot in 15 or 20 minutes? A. Depending on what you say.

Mr. Fielding: I move to strike that out question.

The Court: Yes. Motion sustained.

1862

Q. On direct examination you said you acted more or less as a peacemaker? A. I tried to be.

Q. Do you remember this statement of Hoffman's, page 6: "Yes. I figured to give them 80 per cent. You get enough money and"—something missed—"I offered to Schulman to see that everything was right." And then you said, "I wouldn't let him act. I wouldn't let anybody act." A. I said I would not let him act?

Q. That is what is here. A. No such conversation. As a matter of fact, Hoffman never made a definite offer to the creditors of 80 per cent.

Q. Do you remember: Hoffman: In the first place, you asked me to come down and speak to you. Now you have brought Mr. Goldman over here, and now he starts something." 1863

Do you remember that? A. Something of that kind. In other words, he was not pleased with the continuous bickering and arguments between Goldman and himself.

Q. Were you acting as a peacemaker between Goldman and Hoffman? A. I tried to calm both of them, if that is what you call being a peacemaker. Yes, sir, I would say so.

Q. Why did you?

1864 Mr. Fielding: I object to that on the ground that it is so irrelevant, your Honor.

The Court: Objection sustained.

Q. Mr. Schulman, was the reason you tried to calm them so you would be able to work out the arrangement whereby having two funds, one of which was to be divided among you, Goldman, Hoffman and the auctioneer, was that the reason you tried to calm them? A. There was never such a reason in my mind.

Q. You never said that is what I am trying to find out. A. The very papers you are reading from don't say that.

1865 Q. I am asking you a question. A. No, sir.

Q. Do you remember Mr. Goldman saying this, page 6: "But the assignment would be put out on commission, and Kandell would get paid and the auctioneer would get paid." Do you remember anything to that effect? A. Yes, sir.

Q. What was that about? A. I will tell you why Goldman said, among other things, to Hoffman, "If you had a definite appraisal as to the value of the assets, get it guaranteed. Otherwise all you have is a regular assignee's sale with the auctioneer getting commissions, and whether it brings in a greater or a lesser amount, you have to take it and be satisfied with it, and that is no way to run a sale.

1866 Q. Goldman was calming down? A. I don't know.

Q. You were there? A. I was not.

Q. Wasn't he still angry and unfriendly with Hoffman? A. I didn't examine his feelings.

Q. But by looking at the individuals you could tell, couldn't you? A. I imagine they had somewhat subsided.

Q. "Subsided" is a relative term.

Mr. Fielding: I move to strike that out.

The Court: Yes. The jury will disregard any remarks by the Government counsel unless in the form of a question. Of course when I sustain a

motion to exclude a remark, that indicates the jury should 1867
disregard that also.

Q. Do you remember this, page 7. Hoffman is supposed to have said or at least this is what Bodinger said he said: "You don't know how much you could get? You told me you could force a settlement of 40 per cent through Kandell's help with the Association, and that that 40 per cent would represent around $1000 because there is about $2500 liabilities, and that the balance would be divided up."

Do you remember anything to that effect being said? A. There was some talk about that.

Q. What I just read to you? A. Yes, sir.

Q. "Kandell would have to be considered; you'd have 1868
to be considered"— A. Who is that?

Q. —"you'd have to be considered"—Hoffman said this— A. To who?

Q. Well, to either you or Goldman. You were there. I wasn't. A. All right.

Q. You can tell us who he meant.

Mr. Fielding: I think we can concede by this time that the District Attorney was not present.

The Court: Very well.

Q. "You'd have to be considered; the auctioneer would 1869
have to be considered." Do you remember that being discussed? A. Yes.

Q. "The assignee, myself, and some of the other creditors, such as the three creditors." Do you remember that being said? A. No, sir.

Q. You don't remember anything about the three creditors would have to be taken care of? Did you ever hear anything about the $10 bill being thrown to the creditors to keep their mouths shut? A. There is nothing in these papers about it.

Q. Well, I am not asking you what is in this paper. If

870 you are basing all your answers on what is on this paper, please disillusion yourself. Tell me what the facts were. That is all I want.

The Court: Just a minute.

Mr. Corbin: If your Honor please, the question is whether he heard something about $10 being thrown to the creditors to keep their mouths shut. I object to that because there is no evidence in this record. That same question was asked and excluded on the examination of Hoffman by the District Attorney.

The Court: Well, if he is asking a question I will
871 permit him to ask the question. I will overrule the objection as to his right to ask the question. I will overrule the objection as to his right to ask the question. If you are presuming that some witness testified to that then I will sustain the objection. I think it is competent to ask him any question about any $10 bill or anything like that, but to assume that a witness testified formerly is improper.

The Witness: If the objection has been overruled, can I answer that question?

The Court: Well, I will sustain the objection at this time. Let him rephrase his question, if he de-
872 sires to press it.

Q. Was anything said at any time when Mr. Goldman was present and you were present with Mr. Hoffman at this meeting on April 7th that they would give $10 to the three creditors that were present at the meeting on March 25th, 1937? A. No, sir.

Q. That was never mentioned at all? A. No, and the portion which you—

Q. Did you ever hear— A. And the portion which you didn't read on that subject was "We will take care of three creditors and the other creditors who are entitled to share in this estate."

Q. Then I will read it to you, I will read the whole thing. A. Fine. 1873

Q. I don't want to argue with you, Mr. Schulman.

The Court: Very well. Just proceed to ask the question.

Mr. Walsh. This is on page 7.

Q. And the next part is, "God damn right I was steamed and steamed plenty." And the next, "Do you consider it fair? Wait a second. I didn't speak to you since the time I left that meeting, is that right?" Do you remember that being said, sir? 1874

Mr. Corbin: By Mr. Hoffman.

Mr. Walsh: By Mr. Hoffman.

Q. (Continuing) Was that the conversation? A. That was part of the acrimonious discussion that went up and back.

Q. This wasn't acrimonious. I thought you said three pages back that Mr. Goldman had then calmed down. A. I said he was somewhat calmed down, or did I say "subside," but then it looked like he had boiled up again.

Q. You mean Mr. Hoffman boiled up or Mr. Goldman? A. Well, Hoffman is the one that is talking about "steamed plenty". 1875

Q. That's correct. A. Then he must have boiled up again.

Q. Well, tell me, if this was said when you were present, "Wait a second. I asked him if he had an offer, and he tells me go for fifteen hundred when I knew damn well that stock was worth close to two thousand dollars." Was that ever said in your presence? A. Not that I know; not that I remember.

Q. Well, do you deny that it was said? A. I can't admit it and I can't deny it.

Q. You have no present recollection? A. No, sir.

1876 Q. Does this refresh your recollection? A. Not in the slightest.

Q. You read this piece of paper over, haven't you? A. I read it two or three times.

Q. Two or three times? A. Right. There was also mention at that time about ten thousand or twenty thousand. I don't know of any ten or twenty thousand dollar discussion.

Q. All right. Page 10. Was this said by Mr. Goldman, "Intentionally or otherwise, you should take that opportunity. Let us say somebody"—with dashes—"advising somebody else's client" dashes

1877

"Hoffman: I had an appointment with Niehouse.

"Goldman: Let me tell you something. For instance, I represent the three people or four people, let's say."

Incidentally, there were four people in this petition in bankruptcy, is that correct? A. That is right.

Q. "I don't want X or Y or Z, whoever they may be, and as long as they are designated by letters"—with dashes—"to come to the sale. It so happens that you were up today * * * or even the attorney for the assignee, I'm sure that 1878 said to the creditors where the assignee represents loan creditors"—do you know what that was about? Does that refresh your recollection? A. There was some discussion on two things, I mean, so far as what you read to me.

Q. You see, I wasn't there and I want you to tell me. A. I agree that you weren't there.

Mr. Fielding: I will concede that he wasn't there.

A. (Continuing) But I also agree that I am being faced with that—

Mr. Walsh: I object to this, if your Honor pleases, and I ask that the witness be directed to answer the question.

The Court: Very well, gentlemen. I think we will make better progress and it will be clearer to the jury and to the Court if you will ask the questions, and then you answer them, and if you want to make an explanation to any one of them, you may do so. 1879

Now you may propound the question again, Mr. Walsh.

Mr. Walsh: Will you read it?

Q. (Read.) A. There was some discussion on two things. I think Goldman unbraided Hoffman for trying to have spoken directly to a Mr. Niehouse of Butler Bros. when he knew that somebody else had represented Butler Bros. The impression that I got was that one lawyer, Hoffman, tried to talk to somebody else's client behind that somebody else's back, as far as I know, and as far as I cared about that part of the situation. 1880

Q. Well, I don't care what you care about. As a matter of fact, Kandell represent Butler Bros., didn't he? A. So far as I know, yes.

Q. Go ahead. A. No. 2: Mr. Morton Goldman also made the point that it is quite incongruous, so to speak, for an assignee to represent personal loan creditors in the family and at the same time be the assignee. In other words, he is in a position where he has to serve two masters at the same time and that the courts of the State of New York have decided in many cases that an assignee, such as this, must be or should be removed from his position, no matter how honest he is otherwise. 1881

Q. There wasn't any question in your mind that Hoffman was honest and Kolman was honest, was there? A. I knew —I knew nothing to the contrary and I took him to be honest.

Q. And you had nothing to base your reason to the effect

1882 that the sale on April 5th wasn't honest either? A. It wasn't a question of honesty at all. It was a question of rolling up a thousand dollars or more in administration expenses that we objected to.

Q. Was there any part, during the time of the course of the conversation between yourself and Mr. Goldman and Mr. Hoffman when it would appear that Goldman and Hoffman were again friendly? A. No, not at all. They were never friends.

Q. Well, I ask you this—do you remember this—on page 13, Mr. Fielding—"Schulman: Who is going to be the one to appraise the merchandise," and then Mr. Goldman said,
1883 "We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately. Once a sale has taken place there. Well, a sale will bring, for example, you believe, $2000, and it should bring privately more. And yet I asked Cohen and he says twelve to fifteen hundred.

"Hoffman: Twelve to sixteen hundred dollars.

"Goldman: You get as low as twelve hundred or as high as sixteen hundred. That meant to say he got a group of people in"—do you remember a conversation to that effect—

1884 Mr. Fielding: Followed by dashes.

Mr. Walsh: Followed by dashes, may the record indicate.

Q. (Continuing) Do you remember that conversation? A. Some part of it, yes.

Q. What parts do you remember? A. Well, the general theme of it.

Q. Well, do you remember the general theme about the "and buy it privately"? Do you remember anything about that? A. No.

Q. That isn't the general theme, the "private buying"?

A. No. The general theme is to have different buyers look 1885
at it, have it properly appraised. Right in the portion only where you are reading you will find Morton Goldman had stated it should be appraised by the Underwriters Salvage Company at a certain figure, then the cash buyers should have an opportunity to look at it and the highest price—

Mr. Walsh: May I ask your Honor to instruct the witness to answer without elaborating?

The Court: Well, I think he is entitled to make his explanation. I will let him answer.

A. (Continuing) Based on a reputable appraisal, such 1886
as should be made by the Underwriters Salvage Company; we should then try to get different buyers and know that we are getting the right price and the highest price bids on it.

Q. Well, you certainly never used the Underwriters Salvage? A. I certainly did.

Q. In this case? A. No, sir.

Q. I thought you had Jack Michaels. A. The Underwriters Salvage Company would charge me ten or fifteen dollars or twenty dollars for an appraisal. Jack Michaels I sent there not only to appraise but also to see if he 1887
could bid on it, and there was no financial obligation from me to him.

Q. Did you hear him say Mr. Kreiselman sent him down? A. He said that Kreiselman went with him on my recommendation. That is what he said, and that is the fact.

Q. You were here this morning, weren't you? A. I was here all the time.

Q. And didn't you hear Mr. Michaels say that you called Kreiselman up and Kreiselman called him up and went down to appraise this stock? A. That is what he testified at my recommendation.

1888 Q. But in the paper that you signed, Defendants' Exhibit C,—you wrote that affidavit out for him, didn't you? A. It isn't an affidavit. It's a statement.

Q. You wrote it out for him, though, didn't you? A. That is what he told me on May blank, 1940, when I wrote it.

Q. There is no question about that fact, that Defendants' Exhibit C is in your handwriting, other than Jack Michaels, is there? A. Not the slightest question at all.

Q. And you said, "I was called up by Jacob Schulman." A. That's right, and I would say that I did call him.

Q. How about this "$1000 top"? A. That is exactly what Jack Michaels told me.

1889 Q. But you are talking about $2000 here, on April 3rd. A. Oh, Mr. Hoffman is talking about $2000, and on April 14th he starts right out with the statement that the stock is not worth $200; he should have meant $2000.

Q. Well, you know this better than I do. A. Well—

Mr. Fielding: I move to strike that out.

The Court: Yes, strike it out.

A. Well, I do not wish to make any reflection.

Q. Goldman said, "You get as low as twelve hundred or as high as sixteen hundred." Do you remember that con-

1890 versation? A. No.

Q. Do you remember this:

"Hoffman: How many auction sales did you conduct? Did you conduct plenty of auction sales? For the assignee or trustee or for the receiver? How many auction sales did you conduct?

"Goldman: Plenty of them."

Did you ever hear that? A. There was a discussion on that basis.

Q. That Goldman had conducted plenty of these various private sales? A. I don't know whether his answer com-

prised or included private sales or auction sales or anything 1891
like that, but it is safe to say that Goldman conducted plenty of sales. Whether they were private or public I don't know and I am not interested.

Q. May I go back. You said that you don't remember that particular portion of Goldman's statement where I read: "We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately."

You do not remember anything about that? A. That makes no sense and I can't make any sense out of it either.

Q. And it didn't refresh your recollection when you read it over? A. No, sir. 1892

Q. You have no present recollection at all? A. Except that there must have been a general discussion as to the efficacy, so to speak, of private sales and bulk sales and auction sales and underwriters' sales and assignees' sales. There was that general discussion.

Q. I mean, that is what Hoffman testified, that there was going to be a private sale. Does that refresh your recollection as to what Mr. Goldman meant when you were talking with him, when he said "buy it privately"? A. No. I think Mr. Goldman will explain that.

Q. O. K. Now when you were referring before—do you remember this conversation— 1893

Mr. Fielding: Page?

Mr. Walsh: Page 15.

Q. —"Goldman: I made the auctioneer give me a guarantee * * * let him guarantee that it will bring $2000"—and with dots—"I have got a guarantee here for $10,000"—dots—"minimum guarantee"—dots.

Do you remember that? A. No, sir.

Q. Well, didn't you just call my attention to that a few moments ago? A. Sure I did. I told you that I read it

1894 and that I don't remember any side talk about ten or twenty thousand dollars.

Q. I am asking you now about "that it will bring $2000" and then Goldman says, "I have got a guarantee for $10,000." A. No such talk.

Q. Now subsequently, and prior to the time that Goldman left, were he and Hoffman still angry at each other? A. I would say unfriendly, yes.

Q. Had they calmed down at all? A. They calmed down all right but I guess they were decidedly unfriendly.

Q. Now, after Mr. Goldman left did you have a conversation with Hoffman then or did you leave for a few moments
1895 with Goldman? A. No, sir.

Q. Did you stay right in the room with Hoffman all the time? A. That is right.

Q. You didn't go out in the hall at all with Goldman? A. No, sir.

Q. Did Goldman prior to the time he left say anything that he was going to have nothing more to do with this sale? A. No.

Q. Then he wasn't so mad at the time? A. I say, he remained unfriendly with Hoffman.

Q. But he was going to continue working with you so
1896 far as the preparation of papers is concerned, etc.? A. I had assumed that, yes.

Q. Well they did—the Goldmans did prepare papers subsequently, didn't they? A. Certainly they did but you are asking me on April 7th, not May 6th.

Q. Now after Goldman left—do you remember this conversation—

Mr. Fielding: Page?

Mr. Walsh: 17.

Q. —"Hoffman: Let me tell you something, when the assignee was down there, he reported that one of the buyers

that came down there said that the stock was worth close 1897
to eighteen to nineteen hundred dollars, and was willing to pay fifteen hundred, and kick back three or four hundred, so we can get an idea of what the stock is worth, so what's he trying to do, kid me? What's ten thousand dollars, minimum offer? What's he giving me a buggy ride?"

Do you remember that conversation after Goldman left? A. No.

Q. You don't remember? A. No, sir; never heard of kickback in this case.

Q. What is that? A. I never heard of a kickback in this 1898
case.

Q. You never heard of it? A. No, sir.

Q. What do you call it? A. I call it a creation out of somebody's mind, Mr. Hoffman's mind.

Q. And then you are alleged to have said, "They run into big cases. I told him, this is a small case, but it's a good case." Do you remember that conversation? A. Maybe, most likely.

Q. To whom did you tell it was a good case? A. To Hoffman.

Q. You didn't mean Goldman then, did you? A. Goldman had left the room, hadn't he?

Q. Under this—yes, he had. A. How could I be talking 1899
to him on the outside?

Q. You are talking now to Hoffman. A. Exactly.

Q. And you told him isn't that the reason Goldman wanted to get in here, because you told him it was a good case? A. No.

Q. A small one but a good one? A. No.

Q. Hoffman knew it was a good one. He said they were going to get almost 100 cents on the dollar. A. When did he say that?

1900 Q. That is what he told the creditors on March 24th. A. He himself denied that he said it.

Q. As much and as near 100 per cent on the dollar as possible. A. Which means exactly nothing, a very deceptive term.

Q. Well, I will read on further now:

"Hoffman: You know what I'd do, my friend?

"Schulman: This is a good case where the creditors would legally get their money without any trouble or waiting or bother, and this monk had to stick his face into it causing every trouble or any-

1901 thing. Hungry, I'm not hungry. The hell with that goddam thing. You s[illegible] how many assignments I handle?"

Do you remember saying that? A. No, sir.

Q. What? A. No, sir.

Q. Whom did you mean by "this monk had to stick his face into it"? A. I am telling you if I don't remember the conversation I can't tell you whom I am referring to as "monk."

Q. You don't remember that at all? A. No, sir.

Q. Does this refresh your recollection, that you might

1902 have meant Mr. Morton Goldman? A. No, not at all.

Q. In other words, you deny that that was ever said in that room? A. Not in that fashion.

Q. Well, what was said? A. My thought was, and if there is any testimony on this—

Q. What is your recollection? A. My recollection is—

Q. What? A. —that a case like this should be handled expeditiously and not in the form of an assignment where the administration expenses are at least 5 per cent to 1—five for administration expenses and one for creditors.

Q. Well, this is what you say, or at least this is what is recorded: "This is a good case where the creditors would

legally get their money without any trouble or waiting 1903
or bother." A. That is right.

Q. Do you remember having said anything like that? A. No, sir. Under an assignment they wait a year, at least that. Under a bulk sale they get it in ten days, fifteen days.

Q. You know more about that than I do.

Mr. Fielding: I move to strike that out.

The Court: Yes.

A. I have much more at stake than you do.

Q. No, you haven't!

Now, the voices became low and then it starts in again, 1904
and you are supposed to be the individual that is speaking. A. Yes.

Q. And it says, "with all the big cases and everything else, they're working exactly for glory. If they do grab themselves five hundred or seven hundred or we grab ourselves one hundred fifty, and they wind up with all their forty or fifty or sixty creditors in the office and a couple of stinking lawyers and everything else, they wind up less net than you and I. You understand, that's what I told this fellow, and the proof is not only that they run after those fifteen hundred dollar bills and all that, 1905
but they have time to do it."

Do you remember making statement such as that? A. No, but I can explain it. It does recall to mind something.

Q. What is it? A. For instance, if they remain with forty or fifty or sixty creditors, that doesn't make any sense at all, so I didn't say it.

Q. Well, what does it recall to your mind, that you did not say it? A. I did not say that portion of it.

Q. Well, what portion did you say? A. Well, will you let me answer it?

Q. Surely. A. I also didn't refer to lawyers that have an

1906 olfactory odor or an odor that offends the olfactory nerves. I did say this to Hoffman—

Mr. Walsh: Is that clear, Mr. Corbin?

Mr. Corbin: I thought he said "factory".

The Court: Very well, gentlemen. Let us proceed.

A. I did say this to Mr. Hoffman, that he and I or fellows of our type, we single practitioners sometimes wind up with more net in different matters than Goldman, Malter & Goldman do because their overhead is so large and so that 1907 after paying all their rent and wages and what not, they remain with less than what the single practitioner gets out of the fee.

Q. Is that what this recalls to your mind? A. That is right.

Q. Is that the reason why Hoffman said, "I don't know what your financial background is or isn't, but I say two hundred today in your pocket is worth three hundred next year—possibly three hundred next year." A. Hoffman said that to me?

Mr. Fielding: I object to the question because it is improper. That is what the notes say.

1908 The Court: I will sustain the objection.

Mr. Walsh: I will reframe the question.

Q. That is, at least, what is recorded by Bodinger? A. That I said that?

Q. I said Hoffman said that. A. No, but I never said anything like that to him that I remember.

Q. And then—

Mr. Fielding: Where is this?

Mr. Walsh: Page 18.

Q. —"Schulman: Tentatively now, and then if its wrong. 1909.
"Hoffman: About 10:30 tomorrow morning."

He left that night and he had a date with you for the next morning at 10:30? A. No.

Q. He didn't? A. No.

Q. You don't remember that? A. No, sir.

Q. And then a telephone call came in and you said, "Hello, Mr. A., look, the man with the key is not available now." Whom did you mean by "Mr. A"? A. Will you please read on in that conversation?

Q. Yes, I will be happy to. "If I don't call you by ten o'clock tomorrow, then the appointment stands for ten o'clock at 36 the Bowery. Just the judge, I and Avery 1910
and all that stuff. Where? Who sent you? Oh yes."

And then Hoffman says, "Mr. Schulman, I'm going back to my office. Tentatively for 10:30 tomorrow morning."

You are alleged to have said, "O. K., yes.

"Hoffman: Goodnight."

Now, who was Mr. A? A. I don't know. It might be Mr. Avery there. There was a Mr. Avery in our conversation, isn't there?

Q. Well, you are talking of a "Mr. A." A. I don't know.

Q. You don't know who Mr. A is? A. No, sir.

Q. Could it have been Abramson? A. No, sir.

Q. You are positively sure? A. I am positive about that. 1911

Q. There is no question in your mind at all? A. About what he was doing in 36—

Q. I am not asking what he would or wouldn't be doing. There is no question in your mind that this man whom you had the conversation with, Mr. A. was not Mr. Abramson, is that correct? A. Mr. A, the judge and Mr. Avery had nothing to do with the Hymowitz case.

Q. I am asking you now whether or not Mr. A was Mr. Abramson? A. I don't know that this Mr. A is the correct transcription anyhow. Mr. A don't fit in with Mr. Avery and the judge and you and I.

1912 Q. Well, could it have been Mr. G? A. I don't know.

Q. Could it have been Mr. Goldman? A. No, no.

Q. Well, who were you talking with? A. I don't know. It seems to be about another case.

Q. Oh, no.

Mr. Fielding: I move to strike that comment from the record.

The Court: Yes.

Mr. Walsh: I will withdraw it. I made a mistake.

Q. I will read you now further. After Mr. Hoffman says "Goodnight," then the notes say, "Hoffman apparently left,
1913 and Schulman apparently continued with the phone call."

Did you have a telephone call on that day after Mr. Hoffman left? A. In those days I must have received about twenty or thirty calls a day.

Q. Well, did you have a telephone call after Mr. Schulman left? A. After Mr. Hoffman left—I don't know.

Q. Mr. Hoffman. A. No.

Q. Well, perhaps this will refresh your recollection. You are supposed to be speaking, and these are the notes of Mr. Bodinger now that I am reading:

"I'm in a position now, I control."

1914 What did you mean by that? A. I don't know.

Q. Did you say it? A. I don't know whether I said it or not.

Q. Well, do you deny that you said it? A. I don't admit it and I don't deny it. If you will read the whole conversation at one time you will see that it must refer to another instance, to another case.

Q. All right, I will. "I'm in a position now, I control—what was the figure that you had, the appraisal? He wanted to give the creditors 80 cents on the dollar—fighting to give it to them." Do you know whom that meant? A. I will tell you, sure.

Q. Tell me now. A. My best recollection is, and if you will read the— 1915

Q. Tell me now. I can't wait for the answer later on. He is "fighting to give creditors 80 cents on the dollar—fighting to give it to them." Whom did you mean there? A. At that time I had ~~a Mr.~~ Needleman who was—

Q. Needleman? A. Wait a minute.

Q. Well, I just wanted to get the correct name.

Mr. Fielding: I would like the District Attorney not to interrupt.

The Court: No. You have asked him a question. Let him answer it.

Mr. Fielding: He gets information and when he does not like it he tries to cut it out. 1916

Mr. Walsh: I was trying to get the correct spelling of the name Needleman.

A. He was the president of the "First 88 cents Stores." He at that time gave me a matter he settled with creditors on—or I handled a certain portion of his settlement with creditors where he gave them 80 per cent. Then he made an extension agreement with them whereby he agreed to pay 100 cents on the dollar. He paid them, I believe, 60 cents on the dollar, and then he had a creditors' meeting and then he offered to pay creditors an additional 20 per cent so as to give creditors 80 cents on the dollar. I represented that debtor. I was his attorney. 1917

Q. What was the name of the debtor? A. First 88 Cents Stores, Inc. The records are in this court.

Q. In what year? A. 1937.

Q. 1937? A. Right.

Q. What was the month, do you remember? A. I do not—around April of 1937.

Q. You were handling that case at the same time you

1918 were handling this case? A. Fortunately I had more than one case.

Q. You say that you represented the debtor? A. In that case, yes, I dismissed the petition which somebody had filed against him.

Q. And then you continued, "No fooling. We had to throw it into bankruptcy and steps and so, in order that he should make a dollar?" Did you have to throw the other one into bankruptcy, too? A. No. Somebody else threw that one into bankruptcy.

Q. Well, is this correct that I read to you—and correct me if I am wrong—"We had to throw it into bankruptcy."

1919 A. No.

Q. That is not correct? A. No.

Q. Well, is this correct, "I'm in a position now, I control"? Is that correct? A. I was in charge of the case.

Q. And then we continue this telephone—do you remember to whom you were talking to now? A. No, sir.

Q. You don't know who Mr. A is now? If it comes to you, let me know, will you? A. (No answer.)

Q. "So here's what he did." A. Is that a wisecrack?

Q. "Between you and me, he wanted to give creditors 80 cents on the dollar." That's Mr. Needle? A. It may well be that this is the "First 88 Cents Stores, Inc."

1920 Q. That's Mr. Needle? A. It may well be that, and I think that is that case.

Q. And you are talking now about the Needle case, what I am reading to you? A. I think so, yes.

Q. Well, do you know? A. That's my best judgment.

Q. Well, what is your best answer? A. That's my best answer.

Q. And that is the truth? A. I hope so.

Q. And then you continue, "Between you and me, he wanted to give creditors 80 cents on the dollar, so there was no room for the boys." Do you remember that? A. If

you will transpose that "we" and make it "they" it might mean something. 1921

Q. Well, we will do that and see what that means. A. You are putting the burden of trying to reconstruct something so that it doesn't make any sense.

Q. Well, this makes sense to me. I am asking you what it meant to you at that time, "so there was no room for the boys." What did you mean by that? A. I don't know.

Q. You don't remember that, do you? A. No, sir.

Q. Period. "So we dumped it on it." Do you know what that meant? A. I couldn't explain that in a million years, "we dumped it on it."

Q. In other words, I think it means "we dumped in on it." 1922

Mr. Fielding: I move to strike that out.

Q. Would that refresh your recollection?

Mr. Fielding: I move to strike out what the District attorney thinks about it.

The Court: I will sustain the objection. Gentlemen, I will say this: Don't let us have any side remarks. Mr. Walsh, ask any questions you want to and when objection is made I will rule upon it, but don't argue the case to the jury at this time. I am going to give both sides ample opportunity to argue the case when it is concluded. 1923

Q. Well, if I said that it is probably correct to say "so we dumped in on it," would that refresh your recollection?

Mr. Fielding: I object to transposing any of the language that is on this exhibit.

Mr. Walsh: Well, he doesn't remember it, if your Honor please.

The Court: I will sustain the objection so far as the construction of the language is concerned.

1924 I will permit him to ask any question he wants to that is relevant, whether it is in that document or not, but if you are going to ask a question from the document then it should be literally asked in the language of the document itself.

Q. And then we continue, "Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer"—by the way, who was the auctioneer of Needleman? What was his name in that 88 cents thing? A. Needleman?

Q. Needle. A. Needleman.

1925 Q. Needleman? A. Yes, sir.

Q. Did Needleman have his own auctioneer? A. No. The creditors I think sent auctioneers to his place.

Q. So when you say, "He had two or three men of his own, his auctioneer," did this conversation—do you still say this conversation related to Needleman? A. That is right.

Q. And the 88 cents thing? A. I think so.

Q. You wouldn't say that he meant Hoffman because Hoffman had his own auctioneer? A. At that time there may have been pending a half a dozen bankruptcy cases.

Q. I am asking you whether or not you meant, when you

1926 said "he had two or three men of his own, his auctioneer"—A. It could be Needleman had his own cash buyers.

Q. Well, you just said that he didn't have his own auctioneer. A. Cash buyers to appraise his stock for the purpose of making a settlement, seeing what it is worth.

Q. Well, we are agreed on this, that Wishbow was Hoffman's auctioneer? A. Oh, sure.

Q. No question about that fact? A. Nobody ever disputed it.

Q. Does that refresh your recollection that this conversation related to the Hymowitz case when I read to you as

follows: "He had two or three men of his own, his auc- 1927
tioneer, that wanted to give him eighteen hundred to two thousand, you understand?" Do you remember that? A. No recollection of any connection with the Hymowitz case.

Q. Was Goldman associated with you in the Needleman case? A. He might have had some claims; I don't know.

Q. He wasn't associated with you? A. No, sir, not in that case.

Q. And then you continue, "Now Goldy even"— A. Kandell was.

Q. What? A. Kandell was.

Q. In the other case? A. Yes.

Q. Had you ever called Mr. Goldman "Goldy"? A. No, 1928
sir, never did, and I don't know that anybody else ever did.

Q. Now you say, "Now Goldy even said that it would bring sixteen hundred." Do you know to whom you referred when you said "Goldy"? A. There wan no Goldy in the Hymowitz case.

Q. And then the next statement is this, "Goldman is smart." Does that refresh your recollection? A. No, sir.

Q. Well, there is no question—I will withdraw it. And then you continue, "He says he'd bring twelve hundred and sixteen hundred, understand?" Does that refresh your recollection that it was the Hymowitz case? A. No, sir, because if you will read on further you will see that it 1929
relates—

Q. He will come to that. A. Fine.

Q. This does not refresh your recollection as yet that it has to do with the Hymowitz case? A. No, sir.

Q. "So figuring when he told me that somebody had raised it to two thousand and wanted to give it to him at the figure"—does that refresh your recollection?

Mr. Fielding: That isn't the finish of the sentence.

Mr. Walsh: I am sorry.

1930 Q. (Continuing) "I figured Goldman would get thirty-three hundred for it." Does that refresh your recollection? A. That refreshes my recollection to a point of definiteness and positiveness that there was no mention at all about $3300 in the Hymowitz case.

Q. Was there any mention of $3300 in the Needleman case? A. Might have been because—

Q. Well, was there? A. I think so. He had a $6000 stock.

Q. So now you are definite that this refers to the Needleman case? A. That is my best judgment, that it does refer to the Needleman case.

1931 Q. That is your best judgment? A. Yes, and my best judgment is the other can't possibly relate to the Hymowitz case. There was no $3300 involved in Hymowitz.

Q. But Goldy or Goldman—was there a $1200 mentioned in the Hymowitz case? A. It was, later on.

Q. Was there $1600 mentioned in it? A. Later on.

Q. But because it says here $330 for it, you are definite now that it has nothing to do with the Hymowitz case? A. That is one of the reasons, a very good one.

Q. "But as it is now take another look and tell me"—I will continue—"You don't have to. If we can get a few dollars for ourselves the result is three." A. Didn't

1932 you leave out a dash?

Q. Yes. "If we can get a few dollars for ourselves"—I did, I am sorry. A. Well, that makes a vital difference sometimes.

Q. All right. You explain it. A. I can't explain a dash. I can't.

Q. "If we can get a few dollars for ourselves"—dash—"the result is three." Does that refresh your recollection? A. I can't piece together those remnants.

Q. Well, what do you mean by this "the result is three"? A. Well, if I had the context of the preceeding thing I

could tell you, but this is, thoroughly un—not sensible. 1933

Q. I will give it to you. A. Fine.

Q. "If we can get a few dollars for ourselves"—dash dash—"the result is three." Does that help you to refresh your recollection as to what was meant? A. No. A thousand things might have been said or intended.

Q. Well, I am giving you this opportunity, Mr. Schulman. A. You are giving me an opportunity to fill in dots and dashes of three years ago?

Q. Well, your memory is pretty good on other things. You remember the dashes. A. I remember that you left them out.

1934

Mr. Fielding: I move to strike it out.

The Court: Yes, I will sustain the motion.

Mr. Walsh: I assure you I didn't do it intentionally.

Mr. Fielding: I move to strike it out.

The Court: I will sustain that motion.

Q. You don't know what was meant in that conversation "If we can get a few dollars for ourselves"—dash dash—"the result is three"? A. I certainly can't attribute to myself any sinister motive from that.

Q. Was there anything in the Needleman case that would refresh your recollection that that might have meant the Needleman case? A. No, sir. 1935

Q. "If we can get a few dollars for ourselves the result is three." A. No, sir.

Q. Did you hear Mr. Hoffman testify? A. That what?

Q. That there was going to be the proceeds, the secret fund was going to be split in three ways. A. He didn't say exactly—he never used the word "secret fund" and in all of the papers that you have in your hand there isn't one word that says "secret fund," "hidden fund" "fraudulent fund" or any other words.

1936 Q. Well, we will call it "private fund." A. You haven't got "private fund" in this paper.

Q. Well, I don't want to argue with you, Mr. Schulman.

Mr. Fielding: I will move to strike that out.

The Court: Yes. I will sustain the motion.

A. Or a surrepetitious fund or anything else.

The Court: Very well. Proceed with the next question.

Q. Well, does that refresh your recollection as to whether
1937 or not you said that, sir, "If we can get a few dollars for ourselves the result is three."

Mr. Fielding: Dash dash.

Mr. Walsh: Dash dash.

A. Now did you leave that out by mistake? Excuse me, I don't mean to be quarrelsome. I am under a strain.

Q. I don't mind; go ahead. A. Those dashes can mean a vital difference between day and night. I don't know that I am to supply the dashes.

Q. Well, I am not asking you to. A. You are.

Q. I am asking you—A. You are.

1938 Q. —whether or not that refreshes your recollection that this phrase, "If we can get a few dollars for ourselves" —dash dash—"the result is three." Does that refresh your recollection? A. No, sir. I can't piece these remnants at all.

The Court: He said that two or three times.

Q. "I'll meet you there tomorrow at 10:30, or else if you like, you can come here around ten and I'll go with you."

Mr. Walsh: I don't know what this is supposed to be, and I wouldn't take the opportunity of reading

it without your sanction, Mr. Fielding, "Whey." 1939
What do you want me to call that?

Mr. Fielding: "Whey." That is all I can get out of it.

Q. (Continuing) "Whey, where is it near? I'll have my car here anyhow. The other deal I'll know tomorrow as I told you yesterday also. I'm in control. Yes." Does that refresh your recollection? A. Not at all. I don't know what "other deal" I had at that time.

Q. Well, you said before that it might have been the Needleman deal. A. I didn't say the Needleman deal at all, Mr. Walsh. I never referred to the Needleman case 1940
as the "Needleman deal" and you know it.

Q. All right, the Needleman case. A. That's different.

Q. I did not mean anything by it. A. Well, it has a very—

Mr. Fielding: I move to strike that out.

The Court: Yes. I will sustain the motion.

Mr. Walsh: If your Honor please, I am not going to argue with this witness. I am trying to get information.

The Court: You need not apologize for anything. Just ask questions and I will rule upon the objections as they are made. 1941

Q. Well, does that refresh your recollection? A. No, sir. I don't know what other deal was pending at that time at all.

Q. Now I didn't use the word "deal" that time at all. A. It says that the other deal—the other deal. You are asking me what the other deal is. I don't know. I can't tell you.

Q. But it doesn't refresh your recollection what the other deal was? A. No.

Q. And then you continue, "I'm in control. Yes. Did

1942 you see him there? That's why it's in bankruptcy. I know he will. Yes, yes. All right. Look, I'll tell you this much. In just about a day or so apart. I beg your pardon, I didn't ask that. No. No. I didn't ask that. O. K., big boy, I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock."

Now will you please tell me what "346" means? A. 346 Bowery meant the Hymowitz case.

Q. There is no question of that? A. Certainly, but if you will read the next week's testimony you will find that I wasn't even there with Mr. Abramson.

Q. We will come to that, but at least you are talking
1943 with Mr. A, whoever he may be, that you are going to meet him at 346 the Bowery the next morning. A. Oh no, oh no. Does that indicate I was talking to Mr. A?

Q. Well, you explain it. The conversation—"Hello, Mr. A." You start right out with that. "I'm in a position now, I control," and you wind up, "I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock." A. And I wasn't there.

Q. Well, does that refresh your recollection that this conversation had to do with the Hymowitz case? A. No, sir.

Mr. Walsh: May we have a recess?

1944 The Court: Yes, we will take a few minutes recess.

(Short recess.)

Q. Mr. Schulman—oh, incidentally, did the numbers 346 come up in that Needleman case? A. I don't know.

Q. Is there any doubt in your mind that the 346 at the end of the telephone conversation referred to 346 the Bowery, the Hymowitz store? A. To be frank with you that would be pure guesswork.

Q. And you wouldn't take a chance of guessing? A. No, sir. I don't know that he ever heard it right.

Q. He did not take it out of the clear air, did he, 346? 194
A. There are a lot of other names and whatnot, like Fishbaum instead Wishbow and Goldman for Kolman, that he mistook. I don't know where it came from.

Q. Do you remember Mr. Kolman who was the assignee? A. Yes.

Q. And do you remember on direct examination he testified—

Mr. Fielding: Page?

Mr. Walsh: 258.

Q. —"Did you go down to the store in the company of 194
the defendant Schulman? A. I made an appointment with Schulman. I think it was in the early part of April, in the early afternoon. He said that he wanted to show the stock of merchandise to a prospective buyer. I made that appointment and I met him there that afternoon." A. I heard him so testify.

Q. Do you say that did not happen? A. I say now that it couldn't happen 10:30 in the morning and 2 o'clock in the afternoon, isn't it?

Q. You say you were not there, and then the next question was as follows: "Q. Did he come along? A. He was accompanied by a person whom he introduced as Mr. 194
Lieberman, and I think with him was another man. I don't recall whether he said he was Abramson or not."

Do you remember him testifying? A. He so testified.

Q. And do you deny that you were down there with either Mr. Lieberman or with Mr. Abramson? A. I certainly do, and I will tell you why—may I?

Q. Sure, go ahead. A. For two reasons—

Q. Well, give me one first. A. First, both Mr. Lieberman and Mr. Abramson testified that they were—

Q. Listen—

Mr. Walsh: This is argumentative, if your Honor

1948 please. The mere fact that they testified—

The Court: It is not responsive.

Mr. Walsh: To the effect that Schwartz told them to go down there.

The Court: Just a minute. It is not responsive to the question. The question is, Did you go down there with Mr. Lieberman or Mr. Abramson?

The Witness: Well, for two reasons, no, for three reasons it is no.

Q. I will take ten reasons "no." That's your answer? A. You let me show you a certified check that Mr. Abramson
1949 had on March 31, 1937, where he had another deal on Castle Hill Avenue. He had stated March 31st—it is certified, March 31st; if you want to look at it it is here in court.

Q. It wasn't shown to Mr. Abramson, was it? A. Beg pardon?

Q. It wasn't shown to Mr. Abramson? A. It is Mr. Abramson's father's check. He has it.

Q. And is that the reason, because you say Abramson had the check dated March 31st, 1937, I presume—that is the reason you say you went down in April at the store at 346 Bowery? A. No.

1950 Q. Is that reason No. 1? A. No, sir.

Q. All right, give me reason No. 2 now. A. No, sir. Abramson testified that he was there with another lawyer, by the name of Mormen.

Q. He could have been there twenty times. I am asking you whether or not—A. He said he was there only once.

Q. —you were there with Mr. Abramson at 346 Bowery? A. No, and I will tell you why, because on April 14 in your minutes you will find I telephoned to Phil Cohen and asked him what Abramson offered. If I had seen Abramson on April 7th or April 8th I wouldn't have to telephone to Phil Cohen what Abramson offered.

Q. That is reason No. 2? A. That's right. 1951

Q. Anything else? A. And reason No. 3 is I wasn't there.

Q. We will take that No. 3 reason as No. 1 reason, you were not there. Is that your answer? A. Renumber them any way you like, please.

Q. And then the next question was this: "Q. Well, tell us what happened that afternoon, what conversations took place. A. Well, after Lieberman inspected the merchandise Schulman said, 'How much can you tell us,' and they withdrew to a corner of the store—I was a short distance away—and they talked in a low whisper, and during that conversation I heard the expression "five line.'" 1952

Do you know what five line means? A. I heard it this morning.

Q. That is the first time you ever heard it? A. Oh no, oh no.

Q. I asked you if you knew what it meant. A. I heard it used before.

Q. Do you know what it means? A. I have no definite knowledge of what it means myself, but I heard that expression used.

Q. Then Mr. Kolman continued, "After their conversation Schulman turned to me and he asked me whether he could talk to me the same as he could to Hoffman, and 1953 I said, 'No, Hoffman was handling that.'" Do you remember such conversation with him? A. No, sir.

Q. "I then closed the store and Schulman and I walked towards Broadway. During that walk he told me that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman.". Do you remember him telling you that? A. That's only one stooge testifying to help Hoffman; nothing else. There was no such conversation.

Mr. Walsh: If your Honor pleases; just for the

954 purpose of the record I ask that that characterization be stricken from the record.

The Court: I will strike out the entire answer as not being responsive to the question.

Mr. Walsh: Not that I object to it, though.

The Court: Very well. I will strike it out.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will strike that out, too.

Mr. Walsh: I want it to appear in the record.

The Court: You can ask the question again, if you desire an answer to it.

955 Q. And continuing, "And he said, well"—oh, just a moment. Did you have such a conversation with Mr. Kolman that you told him that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman—did you have such a conversation with Kolman? A. No, sir.

Q. Did you have such a conversation with Kolman at any time? A. No, sir.

Q. During the pendency of the Hymowitz matter? A. No, sir.

Q. In which you stated those words? A. No, sir.

Q. I will continue, "And he said, well, he supposed that
956 Hoffman was very stubborn and that we were greenhorns and we had no right being in the case." Did you say that to him at any time? A. No, sir.

Q. Either at 346 or walking toward Broadway? A. No, sir.

Q. "I asked him why and he said, 'Because just as others control the millinery line and the house furnishings line, so this Dry Goods Association controlled the dry goods and men's wear line, and any time there was an assignment the Goldman outfit handled it.'" Did you ever say that? A. No, sir, that is contrary to the fact.

Q. Because we will come to that later, is that what you mean? A. No. Goldmans don't handle the Dry Goods Association cases. 1957

Q. Do you deny that you had such conversation with Mr. Kolman? A. I do.

Q. At any time? A. I do.

Q. To that effect? A. Right.

Q. And now we come down to the 14th of April in 1937, and was Mr. Hoffman at your office on that occasion? A. My best recollection is that he was.

Q. You did not know that the federal agents were in the room opposite you, did you? A. I wish I did.

Q. You would never have spoken this way, would you? 1958
A. I would have used—there is nothing damaging there yet.

Q. Well, we will see.

Mr. Fielding: I move to strike that out.

The Court: Yes. I will sustain the motion.

Q. Well, Hoffman was present with you on that day? A. I assume so.

Q. And you did have a conversation with Mr. Hoffman in your office on April 14th, didn't you? A. I assume so. I have no—

1959

Q. You read— A. The minutes, yes.

Q. What minutes are these? A. 20.

Mr. Fielding: Government's Exhibit 20-A.

Q. Government's Exhibit 20-A in evidence, from which I will continue to read. You read Government's Exhibit 20-A, didn't you? A. I did.

Q. And is there any doubt in your mind that Hoffman was there on that day after having refreshed your recollection from Government's Exhibit 20-A? A. I must assume that he was there.

1960 Q. I am not asking you for your assumption. Was he there? A. I imagine he was. I have no independent recollection that he was there other than because of these papers.

Q. You don't remember? A. No.

Q. But did this refresh your recollection that he was there? A. I wouldn't fix the date of April 14th or any other date.

Q. You wouldn't say Mr. Bodinger was wrong when he said he took this transcription on April 14, 1937, would you? A. I respect his veracity on that point.

Q. On that one point you would? A. (No answer.)

Q. Is that correct? A. Why limit it on that point? We
1961 are only talking about April 14th.

Q. Now I will read you this and ask you whether or not this refreshes your recollection that you had been down to the store on April— A. The 8th.

Q. —April 8th, 1937. Mr. Hoffman says—page 1— A. He begins with a conversation by saying the stock is not worth two hundred. It should be two thousand.

Q. Perhaps you are referring to something else, Mr. Schulman. A. I am referring to the page you are looking at, the first page, April 14.

Q. Where it starts:

1962 "Schulman: Listen, big boy.
"Hoffman: The upshot is"—
Mr. Fielding: No. A lot of dots.

Q. (Continuing) "The upshot is the stock is not worth two hund ed"—and you say it should be corrected to two thousand? A. Yes. Hoffman said that.

Q. It should be two thousand? A. I think so, because there is no sense about two hundred.

Q. No. We are talking about two thousand most of the time.

Mr. Fielding: I move to strike that out.

Q. (Continuing) "Schulman:" —dots—"said"—dots— 1963
"and the man said to put it in at fifteen hundred dollars in order to put the wriggle in through Fishbaum." He means Wishbow there, doesn't he? A. I imagine he does.

Q. There is no question about that? A. Well, don't you see how some of this—

Q. Wait a minute. Is that the correction you would make, Wishbow instead of Fishbaum? A. Yes, I would. It also shows you that some of these minutes are inaccurate. That is what I said at the very beginning.

Q. I never disputed that. I merely asked you whether or not this refreshed your recollection. A. That is right.

Q. I want you to explain anything that is inaccurate in 1964
the minutes. A. Oh, I can't go over Mr. Bodinger's minutes and tell you what is inaccurate three years later. I could do it a day later perhaps, two days later, but not three years later.

Q. Well, perhaps this will refresh your recollection, "Hoffman: I want it as far as you or I are concerned"—dots, three of them—"we can have this first woman that you had down here, Abramson, and he gives it fifteen." Does that refresh your recollection? A. I never sent a woman down there and I never sent Abramson down there. My appraiser was Jack Michaels.

Q. All right. Now I continue: 1965

"Schulman: No, I'll tell you what I'll do. Cohen said"—three dots.

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money."

Does that refresh your recollection? A. That refreshes my recollection that I didn't go down there with Mr. Abram-

1966 son if I had to call a third party to find out what it is worth.

Q. Well, I am not interested in your reasons. A. No, that is just a plain answer.

Q. You did not go down with him? A. Exactly.

Q. You did not go down with him? A. Exactly.

Q. And then Schulman makes a telephone call. Does this refresh your recollection:

"Hello, who is this, Phil Cohen? Say, Phil, on that Bowery stuff."

1967 Now are you talking about the Hymowitz store? A. I assume so.

Q. Well, is that your present best recollection, that you were talking in this conversation concerning the Hymowitz store? A. That is right.

Q. "What is the top that you could get? Yes. No, no. Wait a minute. It so happens that you sent over Abramson without my knowing it. At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right." Does that refresh your recollection, sir? A. As to what, that I sent Abramson over there or that I was with Abramson?

Q. "I also called in Abramson and Abramson told me
1968 fifteen hundred dollars. Right." A. I may have spoken to Abramson on the telephone.

Q. Well, I don't know. Did you? A. I may have, but I never went down to that store with him.

Q. Well, is Mr. A. Abramson? A. No, sir.

Q. Who is Mr. A? A. I don't know.

Q. It is not Mr Needleman? A. If all Mr. Bodinger heard was "A", I don't know if it is A or Abraham or Abramson or anything else.

Q. I am asking you now, sir, whether or not that refreshes your recollection. A. No, sir. I will not say that

that Mr. A, as is given in the minutes, is Mr. Abramson. 1969

Q. All right. "Now can I let it go to Abramson for fifteen? Yes. No. O. K. Yes. You think it's definite on fifteen? O. K. I'll talk to him. Might squeeze him over if I can. If I can't"—dash dash—You understand what I mean? Because I have a conference with another lawyer here, Mr. Hoffman, and I want to know definitely where he stands and where you and I stand, you know what I mean, as far as the value of the stuff. If he can get 17, 18, 19"—dash dash—Right. O. K." What did you mean by "if he can get 17, 18, 19"—did that mean hundred dollars?

Mr. Fielding: I object to the question because it isn't proof that he said it. 1970

The Court: I will sustain the objection.

Q. Does that refresh your recollection, sir? A. That refreshes my recollection that I wanted Hoffman himself to go out and get buyers and maybe he will get buyers that will be higher than 1500, might get 1600, might get 1800. The highest bidder would buy it and also that Mr. Phil Cohen at that time told me that he wasn't definite that Mr. Abramson would pay $1500 to include the food tickets because Mr. Abramson didn't want them at first, from what I understood from Mr. Phil Cohen. 1971

Q. Now does that refresh your recollection, Mr. Schulman, that you did have a conversation and that "17, 18 and almost 1900" was offered for this stock? A. No, no. That's the worst misconstruction I ever heard of. The only sensible—

Q. Is that your answer? A. Certainly, sir.

Q. All right. Thank you.

Mr. Fielding: May I strike out the words "Thank you"?

The Court: No, I will let that stand. Overruled.

Mr. Walsh: Now on page 3, Mr. Fielding.

1972 Q. Does this refresh your recollection whether or not Mr. Hoffman said this when he was in your office on April 14th, 1937:

"Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125. He takes care of Kandell and Cohen. One hundred and twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five for the attorney for the assignee. The assignee gets twenty-five. That means four hundred fifty. Then there is $35 for your expenses for the petitioning creditors, that's $485.

1973 Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case may be."

Does that refresh your recollection, sir? A. Certainly, sir.

Q. Was that said by Mr. Hoffman? A. He may have mentioned it, yes.

Q. Did he say "We'll figure includes Goldman for $125"? A. That is right.

Q. And "He takes care of Kandell and Cohen"? A. That

1974 is right.

Q. That's right? A. That's right.

Q. "One hundred twenty-five for you to take care of your petitioning creditors." Did he say that? A. May have.

Q. Did he? A. Most likely he did.

Q. Does that refresh your recollection? A. Certainly it does. I will tell you what it refreshes.

Q. You mean "Me, 125 for the attorney for the assignee"? That's three ways, isn't it? A. (No answer.)

Q. Isn't it? "125 for Goldman," and "he takes care of Kandell and Cohen"? A. You see, you are reading—you are not giving—

Q. Well, I am asking you whether or not that was said; was it? A. It was said but you don't know in what regard it was said. 1975

Q. Well, I will let you put your construction on it.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will sustain the motion.

Mr. Fielding: And also ask that the witness be permitted to answer the question.

The Court: Very well. I will permit him to explain if he wishes.

A. We figured that there would be an expense of about five or six hundred dollars, all around. If, after paying the creditors their settlement there would then be gross approximately $500; divided in three would be $125—$135 apiece, out of which fund we would have had to pay the landlord, we would have had to pay all the other priorities, like city sales tax, like the auctioneer's expense. Nothing was said here about the auctioneer's—in other words, that $125 was a gross figure. It did not take care of the auctioneer's expense; it did not take care of the rent; it did not take care of the assignee's bond and all that. We purposely said that so that each one should try to keep down the expenses as much as possible. In other words, there would have to be a re-allocation from that figure of 125, and in your papers of April 21st you will find that when those expenses are taken care of— 1976 1977

Q. We will get to April 21st. A. Beg pardon?

Mr. Fielding: I submit the witness be permitted to finish his answer.

The Court: Very well. I will let him go on with his explanation.

A. (Continuing) And in the April 21st figures that we used, when we took the auctioneer's expense and the rent

1978 expense and the other expenses into considration we said we would be left with net $80, and Hoffman even said "Am I doing all this work for $80," so then I said, "Well, we will do some of the paper work."

Q. Who do you mean "we"? A. I would, Mr. Goldman would.

Q. The Goldmans did most of the paper work, didn't they? A. (No answer.)

Q. What paper work did you do? A. I signed the petition, the involuntary petition; I signed the petition for a stay.

1979 Q. You weren't doing the paper work. You were signing your name. Is that the paper work in your estimation? A. I think so; certainly.

Q. I will take that.

Mr. Fielding: I move to strike out "I will take that."

The Court: I will sustain the motion.

Q. Now you say that you remember this conversation. "Goldman for $125. He takes care of Kandell and Cohen"? A. That's right.

Q. "One hundred twenty-five for you to take care of
1980 your petitioning creditors." A. That is right.

Q. Who were your petitioning creditors? A. Those three people, Schwartz & Zuckerman, Ribach and Mantis, Kreiselman. I think there was talk at that time—

Q. Are they the three that attended that first meeting—A. Before Judge Coxe. They incurred an expense before Judge Coxe by coming down to the courthouse in a taxicab and I wanted to reimburse them for that kind of an expense.

Q. And how much were you going to give them, $10 apiece? A. No, sir.

Q. How much? A. No, sir, whatever they would ask

me, whatever their bill was, and if they also went to the store— 1981

Q. Well, they did not go to the store. A. They did go to the store.

Q. Did you ever give them anything? A. I never gave them a dime.

Q. Now may I refer back for a moment—does that refresh your recollection that the conversation that you had on April 7th:

"If we can get a few dollars for ourselves the result is three"—dashes—"the result is three."

Mr. Fielding: I object to the question because he did not—it is not in the record that he said it. 1982

Mr. Walsh: I am asking him if it refreshes his recollection what it meant.

The Court: Yes. I will overrule it.

Mr. Fielding: Read the question.

Mr. Walsh: I will withdraw the question and reframe it if there is any question at all.

A. I will answer it, whether it refreshes my recollection.

Q. Does it? A. It does not.

Q. Thank you. Whereabouts are Rabis & Mantis located? Where are they located? A. Now they are at 558 Broadway. At that time they were in 17 Orchard. 1983

Q. And where was Schwartz & Zuckerman? A. 15 Orchard.

Q. And how much would their cab fare be over here? A. I do not know.

Q. It is not far, is it? A. I don't know.

Q. Well, how far is Orchard Street from here? A. I don't know what the cab fare would be.

Q. Well, is it 20 miles? A. No.

Q. How far is it? A. It is a ride of about 20 minutes.

Q. So you were going to take care of your petitioning

1984 creditors; you were going to get $125 to take care of the petitioning creditors; is that right? A. No, no. I was going to get $125. From it my proportionate share of the balance of the expenses would be deducted.

Q. That includes rent? A. That included the rent, that included the auctioneer's labor, that included advertising.

Q. Well, now between April the 7th and April the 14th did you communicate with Mr. Morton Goldman or Theodore Goldman at any time? A. I don't think so.

Q. You never communicated with them at all? A. I don't think so.

Q. Well, I mean have you any present independent recol-
1985 lection that you did? A. No, sir.

Q. Or you did not? A. No, sir.

Q. Well, I will continue: "That means 450. Then there is $350 for your expenses for the petitioning creditors, that's $485. Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case may be; and whatever it may be, about $15 all around including the premium on the insurance policy. That would be—wait a second, we'll come to that. Let's see, that's 375, and Goldman for 125, and yourself. That's 375 and 25 for the assignee is 500."
1986 A. It should be 400, shouldn't it?

Q. Well, it should be, but I am just reading it. A. I understand. I am just calling attention.

Q. I merely read that. A. But 325 and 75 make 400.

Q. That is correct. I have no dispute as far as mathematics with you.

"Then comes your disbursements of 35, that's 535, $15 disbursements, that's expenses 550. That leaves $50 over for the other incidental expenses. That brings it up to 600. That means there is $500 left for creditors so far as the sale is concerned."

Does that refresh your recollection that such a conversa- 1987
tion was had? A. I can only tell you that we figured $500 gross expenses, and the balance would be, as you look down further—the balance would be $700 from the stock and $300 from the food tickets. That would mean $1000 for the creditors, but since there is that arithmetical mistake, you will read on further and you will see where I figured out 900 into 25, see, instead of 1000 into 2500, the total liabilities of creditors. There's your story.

Q. Well, they start off with $625 of expenses? A. It should be 525.

Q. No. We are starting off with 600. A. Oh no.

Q. Then there is 125 for you, 125 for Goldman and 1988
125 for Hoffman? A. No.

Q. That is 385, isn't it? A. No.

Q. 375? A. No.

Q. Well, I won't dispute it with you. But you did say that out of that money, you were going to take care of the premiums and you were going to take care of rent— A. Oh no, you haven't read rent.

Q. I asked you that three minutes ago and you said you were going to take care of the rent out of this expense fund. A. That's right.

Q. That is correct, isn't it? A. That is correct, yes, out of the 125. 1989

Q. And then do you remember this being said by Mr. Hoffman on April the 14th—

> Mr. Fielding: You mean the report?
>
> Mr. Walsh: I think at this time we all know what I mean, if your Honor please. This is the report of Bodinger that I am reading from and have been for the last hour and a half or two hours.
>
> Mr. Fielding: Well, it doesn't appear in the record.
>
> Mr. Walsh: I am sorry.

1990 Q. I am reading now from Exhibit 20-A, page 4:

"Hoffman: About 20-5 per cent. Before you're going to figure that, don't forget the landlord doesn't come in from this point on as a general creditor. He is a preferred creditor during the time the assignment was in effect.

"Schulman: He has a right to a check."

Do you remember saying that? A. Why, certainly.

Q. In other words, they were going to pay the landlord with a check. That landlord fee wasn't coming out of that general expense that you were going—A. Why not?

1991 Q. —to whack up, were you? A. Wait a minute. That "whacking up" business isn't there at all.

Q. Then I will withdraw it. A. Wait a minute. Now that you mention it, let us have it.

Q. "He has a right to a check." A. Now, please, Mr. Walsh. You did not like the use of your expression "whack up." Now please be good enough to let me show you two or three lines later where I say that we will reserve from that fund $65 for the landlord's claim.

Q. Well, "He has a right to a check." A. Why, certainly. I did not want—

1992 Q. That is a legitimate expense, isn't it? A. Why, certainly it is.

Q. That the assignee has to pay? A. Certainly.

Q. Therefore you can give him a check? A. Certainly.

Q. There is no question of that? A. Certainly, but we say make a reserve from that fund of $55.

Q. But, Mr. Schulman, when I asked you before about the figure "includes Goldman for 125. He takes care of Kandell and Cohen. One hundred twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five," and you said from that general fund, "we would have to pay rent," didn't you? A. Right, right, right.

Q. Didn't you? A. Right, right; certainly, and two or 1993
three lines later, which you don't like to read, you will find that there is a reserve suggested by me of $65.

Q. Well, if your attorney will show me that I would be most happy to read it. A. Give it to me, please. I will show it to you.

Q. I would be happy. I want you to get the whole story in here.

Mr. Fielding: I move to strike that out.

The Court: Yes, I will sustain the motion.

Mr. Fielding: We don't want any magnanimity here.

1994

(Exhibit handed to the witness by Mr. Walsh.)

Q. Did you find it? A. You only gave me one page in a half a second.

Q. Well, I thought it was directly after this. A. I will find it and I will show it to you.

Q. Well, go ahead and find it for me and show it to me. A. (Examining).

Q. Wait. I will give you the original (handing to witness). A. What are you giving me?

Q. I am giving you Government's—A. Thank you.

Q. —marked in evidence so that there won't be any 1995
dispute about it. A. Here, on page 3: "Schulman: I'll tell you what. Let's for the time being make a reserve of $65."

Mr. Fielding: And dots after that.

The Witness: And dots after that.

A. (Continued) So that $600—

Q. May I just a minute? Where? A. Right here (indicating).

Mr. Fielding: Right above where you started to read the part, "Six hundred dollars."

1996 Q. And is this what you say now: "I'll tell you what. Let's for the time being make a reserve of $65," with the dashes. Now what do you want to fill in for those dashes, that that is for rent? A. Let me read the next question, please.

Q. Surely. If you want to put that in—A. Yes.

Q. —I have no objection. A. Here, here, don't do me any favor because you haven't shown any inclination up to now.

Mr. Walsh: Now I move that that be stricken out too.

1997 The Court: Yes, I will strike it out.

Mr. Fielding: And the same motion with regard to Mr. Walsh's remark.

The Court: Yes, I will strike it out.

The Witness: "Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125."

Q. That is what I have been reading. A. In other words, $500—

Q. It says $600. A. It says 600, but I call your attention to the fact that there was an arithmetical error of $100. There should be—we had figured on paper—

1998 Q. Well, do you remember this conversation—A. Excuse me, sure—500 or approximately $525 was going to be a total fund for expenses out of which we made certain reserves.

(Paper handed to the witness by Mr. Walsh.)

Q. All right. Put down "125" three times. A. All right. That's 375 (writing).

Q. That is one for Goldman, one you and one Hoffman? A. That's right.

Q. That's $125, is that correct? A. Yes, but you are forgetting the main premise, which is $525 for general

expenses. It says, "625," but it should be "525." 1199

Q. Well, I will take your explanation if that is what you—A. Well, it is not an explanation. It is arithmetic.

Q. I am perfectly satisfied.

The Court: Very well, gentlemen. Let us proceed. Ask the next question.

Q. Do you remember saying this: "Schulman: He has a right to a check."? A. Why, certainly a landlord has a right to be paid in full.

Q. Oh, I am not disputing that. A. Well, neither am I.

Mr. Fielding: It doesn't seem possible with all this colloquy— 2000

The Court: Let us proceed with the next question.

Q. On page 5: "Hoffman:"—

Mr. Walsh: At the bottom of page 4, Mr. Fielding.

A. Do you want me to write any figures, Mr. Walsh?

Q. No. A. All right.

Q. "What is the first thing to do?

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer"—periods or dots—"then it will be split three ways. 2001

"Schulman: Naturally."

A. Exactly.

Q. Do you remember that conversation? A. There must have been a conversation—

Q. Do you remember? A. —about a conversation, about a supposed buyer of about 15 or $1600.

Q. And "then it will be split three ways"? A. What, $1600?

Q. "Supposing you get a sixteen hundred buyer," and

2002 then there are three dots—"then it will be split three ways."

Do you remember such a conversation? A. I maintain that my own—

Q. And you said "naturally"?

Mr. Fielding: Let the witness answer the question.

The Court: Let him answer the question. He asked, "Do you remember any such conversation as that."

A. I remember that there was definite talk that every-
2003 thing above the initial payment to the creditors, and taking off later the expenses, my suggestion was that it should be divided three ways: Myself, Mr. Hoffman, Mr. Goldman or the firm of Goldman, Malter & Goldman. There is no dispute about that.

Q. Well, do you remember a conversation with Mr. Hoffman: "Supposing you get a sixteen hundred buyer," and three dots, "then it will be split three ways."

"Schulman: Naturally."

Do you remember that, sir? A. I have answered that question according to my previous answer.

Q. All right. Now I am going back to page 4, just
2004 previous to the last question. It starts off:

"Schulman: Thirty-three and a third per cent"—dashes—"we'll give them thirty-six plus three hundred, plus the what do you call it, plus the City Sales Tax."

A. The relief tickets it should be.

Q. What is that? A. It should have been the relief tickets.

Q. "Plus the City Sales Tax"—three dashes—"get a further distribution"—three dots—"another ten per cent

or twenty-five per cent or forty per cent. When Goldman 2005
had that figure"—three dashes—"here is 36%. Another 10% of 2500 is $250. So it's 36 and 10 is 46." Then it continues, "So shove them through a 40 or 45% and we keep the balance."

A. That's right.

Q. Does that refresh your recollection? A. Exactly. That is what I have been trying to tell you.

Q. You keep the balance after you "shove them through a 40 or 45%" dividend? A. Settlement.

Q. Is that right? A. Gross, gross, to cover all the expenses, and it even indicates that I used the figure $300 as the figure from the city relief tickets. That's what 2006
we were talking about all the time. A

Q. And then I read to you—or Hoffman said after you stated—A. May I add something to the previous answer?

Q. Sure. A. All right. Now how does that sentence begin, Mr. Walsh, please?

Q. Which one? A. The one that you last asked.

Q. "So shove them through a 40 or 45% and"— A. No, that doesn't begin it that way—

Q. "Hoffman: What is the first thing to do?

"Schulman: Now I'll tell you."

Mr. Fielding: He didn't want that. 2007

A. All right, thirty-three and one third—all right. Now one-third—first I tried to figure one-third of 2500 and you find that it is $800, approximately $800. Then when you figure 25 per cent of $2500 you find that it is $600. That shows that their—is it 600? Oh, a little over 600. That shows that the balance of the gross expenses and fees of $500 is approximately 600 and some odd dollars. That is equivalent to 25 per cent. Then if you add that—then if you add on $300 or 10 per cent of 2500 is 250. That makes it 25 and 10 is 35, and so we stretched a

point by paying them a 40 per cent settlement. In other words, if I had a fund of $300 relief tickets, there you have your 40 per cent settlement calculated.

Q. Are you finished? A. (No response.)

Q. Is there any other explanation you want to give? A. That is no explanation. That shows black on white how we were figuring it.

Q. Do you remember this conversation as recorded by Mr. Bodinger on April the 14th:

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer," and three dots—"then it will be split three ways?

"Schulman: Naturally.

"Hoffman: And then what do you have to do? You have to dismiss the petition first?

"Schulman: That's right. The first thing for you to do is get a bill of sale from your man with an affidavit.

"Hoffman: Well then, I'll tell you what you do. You prepare the necessary papers as long as you said you'd do the papers, whatever is necessary to go through with this.

"Schulman: Yes. The only thing is, first get a bill of sale signed by your party.

"Hoffman: I'll have to go up to"—and then certain dashes—

"Schulman: Now get from him a bill of sale with an affidavit as to"—three dashes—

"Hoffman: Well, it's already catalogued.

"Schulman: Number 2. Get a waiver of all these personal little things."

A. It should be "personal loans," not "personal little

things." There is one instance where I can supply the omission. 2011

Q. Well, I am very happy to get it.

Mr. Fielding: I move to strike that out.

The Court: I will sustain the motion.

Q. "Hoffman: Well, I have two affidavits in respect to the money."

"Schulman: Except"—

A. To the money loaned.

Mr. Fielding: Dots. 2012

Q. Dots. A. It should be "for the money loaned."

Q. "Schulman:"—A. Exactly.

Q. —"Except for this $300, get waivers from the rest." A. That is $300; we were talking about a synagogue; remember that?

Q. Those are the personal loans? A. Personal loans.

Q. Your memory is getting better now as I read it? A. Well, I don't know.

Q. I think it is. A. Good.

Mr. Walsh: Well, I will withdraw that. 2013

Q. "Schulman: In other words, I want to be left clear. Or give me an affidavit of creditors totalling $2500.

"Hoffman: All right."

Do you remember those conversations? A. Why, certainly. I insisted on getting an affidavit for $2500 that ultimately, when I would get the money for distribution, we shouldn't be faced with a $3000 or 4000 or any other total of creditors' claims. In other words, I wanted to know if I had so much money to distribute that I had to distribute it to creditors whose total claims totalled

2014 $2500; otherwise there wouldn't be a 40 per cent settlement, and I wanted the personal loans waived.

Q. Now I show you Government's Exhibit 8 and ask you if that is the bill of sale that Mr. Hoffman got for you or as a copy; you have the original, is that correct (handing witness)? A. He left me the original of this paper.

Q. And that is for how much? A. $1200.

Q. $1200? A. Sure.

Q. And have you the original with you in court? A. I gave it to Mr. Fielding.

2015 Mr. Walsh: Have you got the original, Mr. Fielding?

Mr. Fielding: If he gave it to me it is here. (After searching) I haven't got the original. I only have copies of it.

Q. Did you tell Mr. Hoffman to put L. Wein in there, of 430 Grand Street, Manhattan, New York? A. No, sir. I think he told me that Mr. Kandell—or Mr. Cohen told him to use the name of L. Wein of 430 Grand Street.

Mr. Fielding: We have the original (handing to Mr. Walsh).

2016

Q. Mr. Cohen or Mr. Kandell told Mr. Hoffman? A. I say that that's what Hoffman told me.

Q. But did you tell Hoffman to put the name "L. Wein" in there? A. I don't know. I don't think so.

Q. But you heard Mr. Abramson on the stand, didn't you? A. Yes.

Q. And he said on many occasions he used the name "L. Wein" when he purchased articles? A. That's his business.

Q. Well, you knew that he used that name, didn't you? A. I had one $80 transaction with Mr. Abramson in the

year of 1936 or 1935. Other than that I had no business relations with Mr. Abramson at all, and the transaction that I had with Mr. Abramson late in 1935 or early in 1936, this $80 related to a dress store on Eighth Avenue. 2017

Q. Let us go back to page 1 again:

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money."

Do you remember that? A. Certainly.

Q. And then do you remember; further down here: "At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right." 2018

Do you remember that? A. There must have been such a conversation.

Q. Now I ask you again do you remember who it was that told Mr. Hoffman to put the name "L. Wein" in there? A. Hoffman told me that he was told by Kandell—I think it was Kandell; it may have been Cohen, I don't know. I think it is most likely Kandell told him to put the name "L. Wein" and I know Hoffman testified to the contrary. I know Hoffman testified that I told him to put in the name "L. Wein." 2019

Q. And then do you remember this conversation as recorded in Government's Exhibit 20-A—

Mr. Walsh: This is page 6, Mr. Fielding.

Q. (Continued) "Hoffman: When will you let me know whether it's fifteen or sixteen?

"Schulman: Make it $1.00 and other valuable consideration.

"Hoffman: How is he going to show if he pays by

2020 check, if the client is going to pay by check"—three dashes—

"Schulman: He can pay any way I tell him. In other words, the difference between"—three dots—"if I were you, I'd put out that bill of sale for, say, $1300, say twelve fifty is the balance."

A. Put the bill of sale out for $1300?

Q. Do you remember whether or not you made the statement that "He can pay any way I tell him." A. Why, certainly.

Q. To whom did you refer? A. To Mr. Abramson.

2021 Q. To Mr. Abramson? A. Yes. In other words, if you could get a $1500 offer for two different commodities, one is a stock and one is a relief ticket, you can have 1200 for one and 300 for the other. What difference does that make?

Q. Well, was Mr. Abramson going to buy the relief tickets too? A. Certainly. Phil Cohen told me that.

Q. Phil Cohen told you that? A. Told me that. Mr. Lieberman said so yesterday too, and the reason why it couldn't be included all in one lump sum is that the city relief tickets of some three or four hundred dollars are not assignable, right on their face they say "non-transferable."

2022 Q. And then further on you say this—Mr. Hoffman is recorded by Mr. Bodinger—

Mr. Fielding: What page?

Mr. Walsh: It is now the next thing—

A. May I interrupt, Mr. Walsh,

Q. Absolutely; sure. A. You see, you read over there we will take the bill of sale, let us say, for $1300 and then there was another reading there which said, "And the balance is 1250." Now that's clearly erroneous.

Q. It says, "1250 is the balance," I said. A. Yes, 1250

is the balance. In other words, 1300 is the bill of sale and 2023
1250 the balance, that's clearly erroneous, Mr. Walsh. Don't you agree with me?

Q. I have no dispute with you. A. Thank you.

Q. I am asking you whether or not this merely refreshes your recollection. A. Exactly.

Q. As to what was said? A. Exactly.

Q. "Now the next thing is this. If the contract for the bill of sale is $1250, you will get the difference of 250 or 350 as the case may be. How are you going to set certain fees and expenses against that $1250?

"Schulman: Exactly. We can say that we are 2024
satisfied ourselves with a fifty or seventy-five dollar bill, you understand? In other words, we can divide so much officially and so much unofficially."

Do you remember that, sir? A. I don't remember the exact words but there was talk like—

Q. That you would divide so much "officially"? A. Yes, sir.

Q. And so much "unofficially"? A. Right—yes, and the meaning for that is plain. The official part—

Q. I will take it. A. The official part is that which we pay out to creditors, let's say $1000. Now the balance, the 2025
expenses—

Q. Wait till I get that straight. The official is what? A. Is the fixed amount that we have to pay out to creditors. That's definite.

Mr. Fielding: May the witness continue the answer?

The Court: Yes, let him explain. Answer the question.

A. That's definite. That's the fixed amount.

Q. The official—

2026 Mr. Fielding: I again request the Court to let the witness finish the answer.

The Court: Have you finished?

The Witness: I have not.

The Court: Very well, proceed.

A. (Continued) Now the balance of the money which is not fixed and which has not been determined, we will have to work that out separately. That is all there is to it.

Q. Is there any more explanation? A. No. One amount is fixed and one amount is unfixed.

Q. Well, what is the amount that is fixed? What would
2027 that include? A. Just the payment to the creditors.

Q. And then the administration? A. That would have to be worked out. That would have to be worked out because I said, I think, on the minutes of April 21, we agree to sit down at a table and figure out all these expenses and try to agree on them. On April 7th I further said that if we three or four couldn't agree on what the expenses should be then we would call in the rest of the creditors or any of the creditors to fix it for us.

Beg pardon? That's all?

2028 Q. Now, you say the amount that the creditors would get is fixed? A. Certainly.

Q. Is that correct? A. Certainly.

Q. And according to your terminology that's the official figure? A. That's the official figure that they get.

Q. That's fixed? A. That's fixed.

Q. And the unofficial figure is what, according to that? A. Is that which we will have to fix later on when we sit down at a table and go over the figures and see whether we agree on the figures.

Q. Well, isn't it a fact, Mr. Schulman, that you can't decide what you are going to pay the creditors until you

get all the expenses? A. Not at all, and I will tell you why. 2029

Q. Surely. A. There never was an agreement between Hoffman and myself as to how much the auctioneer should get. He wanted to give him $100 besides—for a fee besides his expenses, and I said in those minutes there which you are reading, that that will almost be as much as—that will be more or approximately as much as we would get and I resented it by saying "Since when are auctioneers partners with lawyers?"

That's one thing, and I even said on April 21 or April 26, "I don't take credit for anything. I don't fix the amount." I say, "We will sit down and we will try to iron it out." 2030

Q. But how can you get the official figure unless you know what expenses are going to be? That is what I want to know. A. Well, we figured that the creditors are entitled to at least 40 percent.

Q. Oh, they are entitled to everything other than legitimate expenses? A. Naturally.

Q. That is correct, isn't it? A. Naturally, certainly.

Q. Well, why don't you figure the list of expenses out first, which you call unofficial before you fix what the official figure is? A. You couldn't.

Q. Why? A. Did we know in advance?

Q. You could figure out what expenses are— A. No: 2031

Q. When you get a thousand dollars you can't figure at that time what the expenses are? A. No, sir, and I will tell you why.

Q. Shoot! A. For instance, the city sales tax we figured for $50. Actually Hoffman settled it for $300. Now could you figure that out in advance?

Q. But you don't set the official figure until you have that city sales tax finished, do you? A. There was a fund of $500 or 500—

Q Now wait. Let me ask you the question. A. All right.

2032 Q. Isn't it a fact that you can't figure out anything so far as the official figure is concerned before you take care of the city sales tax? A. No, sir, you are wrong.

Q. Why? You said it was $1000 and finally Hoffman settled it for $300, is that correct? A. No, I didn't say that.

Q. What did you say? A. I said we figured on settling the city sales tax claim for $50.

Q. And how much did you settle it for? A. Hoffman settled it for $300.

Q. And you were going to settle it for $50? A. Yes, sir.

2033 Q. But at that time did you figure you were going to settle it for $50? A. Yes, sir. There is testimony to that effect.

Q. Was the official figure, so far as the creditors are concerned—was that fixed at that time? A. No.

Q. You couldn't? A. No.

Q. In other words, all the expenses had to be figured out before you could set the official figure? A. No, sir—no. We had a certain fund of 500 or five and a quarter, from which we would make our various payments to the auctioneer, to the city sales tax, to the disbursements and so on and so forth, and then after all that would be left, we

2034 figured there would be about $80 or $90 left for each one of us.

Q. Well, you had no right to that? A. Why not?

Q. Did you? A. Why certainly did.

Q. For signing your name—I will take your own figures. A. Yes.

Q. You say you were going to do the paper work? A. That is right.

Q. To sign your name you are entitled to $80? A. Oh, no.

Q. Is that your conception? A. Oh, no; oh, no. You missed the whole point.

Q. I am afraid I do. A. Well, let explain it to you, 2035
please.

Q. I will be happy to. A. If I would have gotten a 50 or 100 dollar bill or anywheres near it I would have earned it, for this reason: I was instrumental in getting back an estate where creditors realized 40 per cent when before I got in it was in such position that they wouldn't have gotten it.

Q. Hoffman said he was going to give them 80 per cent and they finished it—they got 17 per cent. A. Oh, that is just the reverse of the truth, and I will tell you why.

Q. Shoot! A. Hoffman never said that he would give creditors 80 per cent, and I have figured it because my 2036
participation in this assignment proceeding didn't cost them a nickel, and he finished it and he got creditors 17 per cent.

Q. Well, what do you mean by saying "He was fighting to give them 80 per cent"? A. I wasn't talking about him. He wasn't fighting to give creditors 80 per cent. The creditors that will follow me on the stand will tell you that. He was kidding them about it.

The Court: Very well, gentlemen. We will stop now. It is five minutes after five.

At ten o'clock tomorrow morning. 2037

(Adjourned to July 24th, 1940, 10.00 a. m.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 24, 1940;
10:00 A. M.

2038

TRIAL RESUMED.

JACOB P. SCHULMAN, resumed the stand.

Cross examination continued by Mr. Walsh:

Q. Now, Mr. Schulman, according to the notes taken by Mr. Bodinger on April the 21st, 1937, Government's Exhibit 19-A—

Mr. Walsh: Page 5, Mr. Fielding.

Q. (Continued) Do you remember this conversation being had between you and Mr. Hoffman:

2039

"Schulman: He gets, let us say, $100. Kandell says, therefore, 50, 75, 25, whatever it is. Actually, Kandell makes more money on a thing like this than anybody else. But what does Martin do? He goes up"—dashes—"and he grabs himself a fifty. That is every day in the weeks. It's five times fifty. Next I"—then dashes—

"Hoffman: Yes, I suppose they get"—a couple of dashes—"boy, what a racket this is. What are we going to do?

"Schulman: Who is going to see"—dash dash—

2040

"the bill of sale. I shouldn't teach you this business. I know if I tell you these things it stays with you.

"Hoffman: Those things you pick up sooner or later.

"Schulman: It took me five years, young man." Do you remember that conversation? A. That was part of the general conversation that I had.

Q. Well, do you remember that part of the conversation? A. Yes.

Q. And did you say that was attributed to you in this transcript? A. In substance.

Mr. Walsh: This is on page 6, Mr. Fielding. 2041

Q. In the same transcript, do you remember this conversation being had with Mr. Hoffman:

"Schulman: "—Hoffman says this first:

"See if that thing is in order.

"So you said you'd get on to it. It took me years to get on. Let me tell you another thing. I don't know now how the average practitioner shows as much honesty and sincerity as you have exhibited in this case."

Did you say that? A. Sure. I complimented him on trying to be honest and sincere with me, and I 2042 with him.

Q. And you did not know how he could make a living that way? A. Oh no, it doesn't say that. Does he say that?

Q. Is that what you meant? A. Oh no, no, not at all, Mr. Walsh.

The Court: Don't let us get into any arguments today.

The Witness: Not at all.

The Court: Mr. District Attorney, I want you 2043 to put the questions and I want you, Mr. Witness, to answer them, and I don't want any remarks back from you or any side remarks. If the witness is required to answer a question categorically yes or no, then he is entitled to make an explanation without any reflection upon anybody whatever. I think this examination has been more or less unduly prolonged and time unduly taken. I am not going to shorten the cross examination, and I am not going to shorten the redirect examination, but I am going to confine this examination today to questions and

2044 answers and not argument. Now it is competent always to show whether or not any party made any statement against interest. I am going to permit that to be shown, but where the testimony or, rather, the statements that were alleged to have been made in the room are not in conflict with his present testimony, that is not permissible to go over it, and I am going to stop it of my own motion where he does go over it, because, gentlemen, if we proceed in this manner of taking line by line of immaterial matters—and some of them are immaterial—why, it will take us another ten days on this case which I 2045 cannot give to it, and I am saying this with all deference to you gentlemen, without any criticism or anything, but just as a suggestion how I would like for you to proceed.

Mr. Walsh: Thank you, your Honor. I have cut it down very considerably since yesterday.

Page 7, Mr. Fielding.

Q. And do you remember, Mr. Schulman, this conversation being had between yourself and Mr. Hoffman on April 21, 1937:

2046 "Schulman: All right, that's fine.

"Hoffman: You say you're getting sixteen hundred?

"Schulman: Fifteen or sixteen hundred.

"Hoffman: Listen, bum, is there any more that you're getting out of this"—dash dash—"on the level? I mean without a smile.

"Schulman: Seriously, I'll show you. You shouldn't have any doubts. I'm glad that you're frank about it.

"Hoffman: Yes, I want to be frank about it."

Did you have such a conversation? A. I don't

think all the words that you just read were said at 2047
that time. I don't believe that Mr. Hoffman addressed me as "bum" or anything of the kind.

Q. Well, do you remember that "Listen, bum, is there any more that you're getting out of this"—dash dash—"on the level? I mean without a smile." A. No, I don't remember that.

Q. You don't remember that? A. No.

Mr. Walsh: Page 9.

Q. Do you remember this conversation being had between you and Mr. Hoffman on that occasion: 2048

"Hoffman: You mean these three monkeys that you got there, these bums?

"Schulman: Yes.

"Hoffman: I thought you're taking care of them from your end. Wait a second. I thought you're taking care of them from your end."

Do you remember that conversation? A. No, sir.

Q. Does that refresh your recollection? A. No, sir.

Q. Well, was there any conversation had between you and Mr. Schulman at that time— A. Mr. Hoffman. 2049

Q. Or Mr. Hoffman in taking care of the three creditors who were present at the meeting on March 24th when they were going to throw them a $10 bill apiece and you were going to take care of them from your end?

Mr. Fielding: I object to the question.

The Court: I will overrule the objection.

Mr. Fielding: Exception.

A. In all of the time on April 21 there wasn't one suggestion or one word mentioned about $10 apiece to the creditors. There wasn't any talk about referring to them

2050 as "bums" and there wasn't any talk about my taking care of them to the extent of $10. The minutes don't show it. The only think I think on the previous week there was a suggestion that I should take care of their disbursements, taxi fare in going to the courthouse and when they left their business perhaps, other expenses, in going to the store with other creditors, but that's about all.

Q. In other words, your answer is that the incidental expenses that these creditors had in taking a taxicab to the Federal Building and expenses going down to the store to look it over, you were going to take care of it from your end, is that right? A. With whatever other expenses they

2051 had, yes.

Q. Incidentally, did these three creditors or your two creditors ever pay you the $35 that you put out on the disbursements for filing the petition in bankruptcy? A. My net loss was about ten or fifteen dollars.

Q. I asked you a question. A. No, they never did.

Q. Who paid you? A. I took the loss myself.

Q. Did the Goldmans ever contribute to the loss that you sustained on that occasion? A. No, sir.

Q. Did you ever ask them for it? A. No, sir.

Q. Do you remember this conversation,—

2052 Mr. Walsh: Page 13, Mr. Fielding.

Q. (Continuing) "Hoffman: I see.

"Schulman: I'm only figuring the City Sales Tax which is $300. If we get five, that's fine.

"Hoffman: You mean you divide three ways whatever is received from the City.

"Schulman: And if we only get three, three hundred from the city, we make $180 apiece, which is more than what you would have made in any other event."

Do you remember such a conversation to that effect? A. No, sir, and I will tell you why. 2053

Q. You don't remember it? A. No—wait a minute. That is an error in transcription. That should be $80 apiece because a page or two later Mr. Hoffman says, "Well, why am I doing all this work for, for $80 my end?"

Q. Well, this was going to be the division of the moneys received from the city which would up your end, say, $100? A. No.

Q. Three ways? A. No; $300 plus the $1200 would be $1500 and then there would be approximately $80 left, net, for the three lawyers. The next page or two will show that Hoffman himself clarifies it, talks on about different 2054 expenses.

Q. Do you remember this being said by yourself—

Mr. Walsh: On page 14, at the bottom.

Q. (Continued) "I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office."

Do you remember such a conversation? A. Yes, but the statement before that shows Hoffman says, "Why should I do all this work for $80."

Q. I will read that to you. A. Fine.

Q. "Wait a second. You think I'm going through all 2055 this paper work for eighty dollars or one hundred dollars? You think I'm going to bother much more with this? I'm sick and tired of this." A. That is right.

Q. Then you say, "I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office." A. That is right.

Q. Is that correct? A. That is right.

Q. Does that refresh your recollection? A. That is right. That shows essentially the figures we were working on, 1200 and 300, after taking care of the expenses, there might be $80 apiece for the three.

2056 Q. That is before you figured the $300 for the city A. Oh no. In yesterday's talk we figured the city—not the City Sales Tax; that is a mistake in transcription also—the city relief tickets for $300. There is another instance right nearby where Mr. Hoffman says, "If all we get is $80, then I am not sufficiently paid."

Q. Now on April 26th did you also have a conversation with Mr. Hoffman in your office, referring to Government's Exhibit 18-A? A. 18—yes.

Q. And on that occasion did you speak to Mr. Wishbow over the telephone? A. I don't remember that I did.

Q. Well, having read Government's Exhibit 18-A, does
2057 that refresh your recollection whether or not you did or you did not speak with Mr. Wishbow over the phone? A. It is likely that I did, it is likely that I did.

Q. What is your present answer? A. My present recollection after having seen the minutes is it may well be that after seeing the minutes I did speak with him over the telephone.

Q. Well, did you speak with him? A. I imagine I did.

Q. So your answer is yes? A. My answer is what I have given it to you.

Q. And what is that? A. After having read the minutes
2058 and refreshed my recollection from that, my best judgment is that I did speak with him over the phone on that day.

Q. Can you, without going over this, tell us what you said to Mr. Wishbow on that occasion on the telephone? A. He wanted—he wanted from Mr. Hoffman, as Mr. Hoffman narrated it to me, while Hoffman was speaking over the phone, that he wanted some assurance that he would get paid his labor and his fee. I said to Hoffman—I said to Hoffman and I said to Wishbow that when I get this money, whether it is 1200 or the 1500, I wouldn't touch a dime of it, I wouldn't take a postage stamp for myself or for anybody else. I am making no commitments or ar-

rangements about his compensation at all, that I would 2059
sit down with him, with Martin Goldman, with Mr. Hoffman at a table and try to adjust his claim for compensation and for labor that he had, on the general theme that if we three or four could not arrive at a satisfactory solution on that point or any other point, then we would call in the creditors to be the sole judges and arbiters.

Q. Was there anything said about giving a receipt for the $1200 on that occasion? A. I know that I issued a receipt for the bill of sale which I—

Q. I asked you specifically if there was anything said on that occasion concerning a receipt for $1200. A. I don't believe so because I didn't have the money. 2060

Q. Was there any dispute or was there any argument between you and Mr. Wishbow or Mr. Hoffman concerning how this extra $400 would be deposited, whether or not it would be deposited in a joint account? A. Not at all, not at all. There was a conversation with respect to the entire fund being deposited in a joint account.

Q. Now may I read to you—

Mr. Walsh: Page 4.

Q. (Continued) And does this refresh your recollection:

"Hoffman: (To Schulman) He wants to know 2061
whether you want to talk to him.

"Schulman: Explain to him"—then there are three dashes—"(takes the telephone) Hello. Since when do you want me to open a joint account in this case? Yes. You don't see why not? You mean you can tell a lawyer why you can't see why it shouldn't be a joint account? Why? For Christ's sake, this fellow Hoffman handled less than half a dozen assignments in his life, can see the point in two minutes and you can't after being years with Harry Rothenberg. I'm going to make distribution to my

2062 creditors, and the twelve hundred dollars you're going to be given a receipt for that. If I'm not no good in that regard, don't do any business with me. I'll tell you this much. If you ask any auctioneer with brains how to handle it"—and then there are some dashes, and then Hoffman says, "Wait a second."

Do you remember that? A. Read the next page and you will see that it refers to the entire fund of 12 and 3.

The Court: Answer the question. Do you remember that?

2063 The Witness: Yes, yes.

The Court: And then he will explain—just a minute. The question was, do you remember that. Do you or not?

The Witness: There was such a conversation in substance.

Q. And that joint account was for the $1200? A. No, sir. The next page shows the entire fund.

Q. I asked you whether the joint account was for the $1200? A. No, sir.

2064 Q. What was the joint account for? A. For the whole fund. 1200.

Q. What was the whole fund? A. $1500.

Q. That was the whole fund? A. Exactly.

Q. And the joint account was for the whole fund? A. Exactly. That is what he wanted, and I wouldn't give it to him because I owed my responsibility to creditors.

Q. I will read and continue:

"Hoffman: Wait a second, let me talk to him. (Takes telephone) Hello, Gabe, listen. I tell you what. I think it would be all right to get the re-

ceipt from Schulman and then in connection with 2065
the four hundred that he is holding—wait a second now—the four hundred that he'd be holding, together with whatever allowances would be made out of the twelve hundred, then we could all meet at a certain time and distribution would be made."

Now does that refresh your recollection that the joint account was for the $400 so that you would have control of it, so that you could make distribution when you all met together? A. No. Read the next page and you will see that we would all sit down at the table and divide the 1500. Hoffman thought we should get 1600. 2066

Q. So that doesn't refresh your recollection concerning the joint account, that that was for this $400? A. Not at all. It doesn't say so at all. The next page will show I am—that you are absolutely wrong in your interpretation, Mr. Walsh.

Q. Then do you remember—

Mr. Walsh: This is on page 5, Mr. Fielding.

Q. (Continued) You said:

"Schulman: Hoffman said first: "I don't know what to say," and then: 2067
"Schulman: If he don't trust Martin Goldman or me or you, tell him to go to hell. That's all."

Do you remember saying that? A. I may have said that.

Q. Did Wishbow want a joint account for the $400? A. Not at all. Wishbow was only interested in getting an advance payment on his fee and disbursements.

Q. He did not want a joint account at all? A. It wasn't his function even to recommend it.

Q. I am not talking about for the main fund, the $1200. I am talking about the other fund, the $400 that was go-

2068 ing to be divided among the three of you. A. If you read—
Q. Is that correct or is it not correct? A. It is absolutely incorrect, and the reading of that page shows it. All he wanted was an advance of his disbursements and of his fee and I said I wouldn't give it to him.
Q. Then subsequently—

Mr. Walsh: On page 5.

Q. (Continued) So that you will get the contents, and was this conversation had between you and Mr. Hoffman and Mr. Wishbow over the telephone:

2069 "Schulman:"—or I will start:

"Hoffman: (Over the telephone) Gabe, I think it will be all right. You know"—three dashes—"Wait a second, you can't dismiss the petition one, two three. You got to make a motion in order to show cause, so it still will take two days, right? Yes. I don't know what to do. You better straighten it out with him. He says that he will pay you the disbursements and also a certain amount. Wait a second.

"Schulman: I don't take any credit for myself. I told him the other day sitting there at the table with
2070 you"—dots—"he wants to be a"—three dashes—"let him be."

And the next:

"Hoffman (Over the telephone) You hear what he said? He said the same as he told you. He said there isn't any fixed amount that you're to get above your disbursements."

Do you remember that? A. Certainly, but you also left out where I said—

Q. I will read that. A. No, you left out a page or two before. 2071

Q. "that lie and Martin Goldman and you and myself will sit down at a table when this thing is disposed of; and that will all be gone over and you'll be satisfied."

Do you remember that conversation? A. Sure, sure. In other words, I didn't fix any fee or any amount. As soon as we'd have the 15 or $1600—I said 15 all along; that was my understanding, and Mr. Hoffman tried to make it 1600—we would sit down at a table and figure out what his legitimate expenses were and what fee, if any, he is entitled to. That is all there is to, but you still left out a page before where I said that I cannot open a joint account for this entire fund because I would be dismissing the petition in bankruptcy and then when I would have to make distribution to creditors I would be tied up with a joint account and I would be at the mercy of Mr. Hoffman to sign checks with me. 2072

Q. And then further on, in the same conversation:

> "Listen, as far as I'm concerned, here's the way it was explained to me. First, wait a second. The disbursements are paid in full? Hello. The disbursements are paid in full. Then after that Martin Goldman and Schulman and myself are to get an equal share. Before we divide that three ways, you are to get a reasonable amount for the services which you rendered as an auctioneer. In addition to the disbursements, and that will be argued out over the table. Hello. Is that satisfactory? All right then. It's all right to get the receipt for the bill of sale? All right." 2073

And evidently the telephone conversation ended.

Now does that refresh your recollection that there was going to be a joint account and that Wishbow wanted a

2074 joint account for the second fund? A. You're misreading the—no. The answer is no. You're misreading the entire paper.

Q. That's enough. A. If you will read before that question you asked me you will find Hoffman asked him and he wants to make sure that you will get your disbursements and your fee, nothing else, and there was no suggestion by Wishbow of a joint account on the $400 or $300.

Q. And then subsequently:

"Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate."

2075

Do you remember that? A. That's my receipt.

Q. That is the receipt dated April 26, 1937? A. Dated April 26, 1937; that is right?

Q. Where you turned over that bill of sale to him, is that correct? A. No.

Q. Or he turned it over to you? A. To hold in escrow showing—

Q. Did you find the original bill of sale yesterday? A. They showed it to you yesterday.

Q. No, they did not. A. They didn't?

Q. Have you got the original of that? A. The last I

2076 know I gave it to Mr. Fielding.

Mr. Walsh: Have you got that?

(Paper handed to Mr. Walsh by Mr. Fielding.)

Q. Is this the original— A. It is.

Q. —bill of sale? A. It is.

Q. And "L. Wein," in whose handwriting is that, do you know? A. I don't know.

Q. Did you write it in? A. No, sir, that is not my handwriting.

Q. Did you tell Mr. Hoffman to write it in? A. No, sir.

Q. Did you tell Mr. Hoffman that L. Wein was the pur-

chaser? A. I did not. Quite on the contrary. Mr. Hoffman told me that he got— 2077

Q. Just a second. Will you wait? A. I am answering the other question. Quite on the contrary. Mr. Hoffman told me—

Q. You said that is not in your handwriting? A. That is right.

Q. That you did not sign it? A. That is right.

Q. And that you did not tell Mr. Hoffman to put in "L. Wein"? A. That is right.

Q. "Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman:"—three dashes—"I mean call him up anyway. 2078

"Schulman: I think his name is Louis Wein."

A. That is right.

Q. And you did not tell Mr. Hoffman to put "L. Wein" in that bill of sale? A. No. He was going to call up Phil Cohen to make sure that it is L. Wein.

Q. Well, you heard Mr. Abramson on the stand and he said that he used the name "L. Wein" on occasion? A. No question about it.

Q. And you knew that, didn't you? A. No. 2079

Q. Well, you knew his name on April the 26th, that L. Wein was supposed to be a buyer? A. And don't you see where Mr. Hoffman said, "I'll call up somebody"—

Q. Is that correct? A. —to find out if his name is L. Wein.

Q. And what did you say? You knew his name was L. Wein? A. No, sir. If I knew it I wouldn't have to call up anybody.

Q. Well, that is what you told him, didn't you? A. It may be after the telephone conversation.

Q. It was after the telephone conversation. A. All right.

2080 So after he got that name from Phil Cohen I said, "Yes, it may be L. Wein."

Q. "I think his name is Louis Wein." Is that your explanation? A. I don't give you an explanation. I am giving you—

Q. Well, I am asking you for one, sir. A. An explanation of what?

Q. How it happens that on that receipt or the bill of sale dated April the 26th, 1937, the name of L. Wein appears. A. The minutes—they seem to indicate that he called up somebody to find out whether the name is L. Wein, and then when I got it I said, "Yes."

2081 Q. Well, did you know that L. Wein was Abramson? A. No.

Q. You never knew that prior to this trial? A. No, I don't think so; no.

Q. You never did? A. Prior to this trial?

Q. Yes. A. Oh, during the last two or three years, I heard, especially after the telephone conversation, I was rather informed of that fact.

Q. Were you amazed when you heard that Abramson was Louis Wein? A. That's an unfair question. I can't answer that. Mr. Abramson is not L. Wein.

Q. Who is L. Wein? A. Who is L. Wein?

2082 Q. Yes. A. L. Wein is an individual whose name Mr. Abramson, from what I gather, used in making certain purchases of articles.

Q. And did you know that on April the 26th, 1937, that Abramson used that name "L. Wein"? A. After the telephone call was made by Hoffman I knew it.

Q. But you did not know it before that? A. I don't think so, and I didn't know that he wanted it in that name or any other name until Mr. Hoffman called up and found out.

Q. Well, the transcript reads—

Mr. Walsh: On page 6, Mr. Fielding. 208

Q. (Continued) "Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman:"—three dashes—"I mean call him up anyway.

"Schulman: I think his name is Louis Wein."

He did not make any call before you said, "I think his name is Louis Wein"? A. I don't know whether he made a telephone call. I think he did.

Q. Well, you saw these notes, Mr. Schulman? A. I know, but these notes are dots and dashes. There may have been— 208

Q. In other words, do you think, and is your testimony to the effect now, that Hoffman did call up somebody and then he got an answer and then you said, "I think his name is Louis Wein"? A. That is right, that is right.

Q. But you are the first one in this transcript that mentions the name "Louis Wein"? A. Well, he said he was going to telephone and he did telephone.

Q. But he didn't telephone the office directly— A. Oh no, it doesn't say that he did or did not phone.

Q. Well, does it refresh your recollection at this time that he did make a telephone call? A. It refreshes my recollection that if I have Mr. Abramson as the buyer and I know Louis Wein, he did not have to make any telephone call about it. 208

Q. Well, you did know L. Wein, didn't you? A. No.

Q. And that Abramson was L. Wein? A. No, sir.

Mr. Walsh: Do you want to call the calendar now, sir?

The Court: No, sir. I want to go on with this witness for a while.

2086 Q. You were mentioning some of the tricks that you knew concerning auctioneers. Did you ever hear them put in a fictitious bid or a bid under a fictitious name for the purpose of cheating a legitimate creditor? A. No, sir.

Mr. Corbin: Just a moment.

Mr. Walsh: I asked him if he ever heard of it.

Mr. Corbin: All right, he has answered it.

Q. By the way, did your creditors know that you were going to withdraw the petition in bankruptcy? A. They told me—they certainly did. They heard me say so before
2087 Judge Coxe. We spoke about it before we went over to Judge Coxe. That was their original plan. That was their only plan.

Q. That was on April the 5th? A. That is right.

Q. Is that correct? A. That is right.

Q. And do you remember the date when the petition was actually withdrawn? A. May the 12th the order was signed, or May the 13th, and after that the creditors were notified that it had been withdrawn or dismissed.

Q. Did you— A. And my clients sent me signed consents of the 40 per cent settlement with full knowledge of the entire plan of respecting a 40 per cent settlement. I have
2088 those consents.

Q. And did you notify them—in other words, if my memory serves me correctly—and correct me if I am wrong—you just said that you told the creditors that you were going to withdraw this petition on April the 5th when you were before Judge Coxe, is that correct? A. I didn't say that at all.

Q. All right. Now when was the first time after April the 5th that you told your creditors, Schwartz & Zuckerman and Mantis, that you were going to withdraw the petition in bankruptcy? A. What is the question, the first part of it?

Q. (Read) A. Some time in the latter part of April, 1937. 2089

Q. And it was before May the 13th? A. Oh, sure.

Q. And did you get those consents from your clients prior to the time that you withdrew the petition in bankruptcy? A. No. Those consents were enclosed with a letter that is in evidence, that I think is dated either May 9th or May 13th, which explains that steps are being taken or have been taken to vacate or withdraw the bankruptcy, to withdraw the assignment, and that a 40 per cent is in the offing. That letter had with it enclosed a consent. They signed it and returned it to me—returned the consent to me.

Q. And on occasions I presume that you would tell the 2090 creditors what was happening? A. Yes.

Q. And you also told the creditors that you were going to make a motion or a motion was going to be made to dismiss the involuntary petition in bankruptcy? A. I don't think I told them in so many words. I may have told them substantially that we will withdraw the bankruptcy and withdraw the assignment so that a settlement—

Q. In the firm of Schwartz & Zuckerman whom did you have most of your conversation with? A. Mr. Schwartz.

Q. And in the other firm? A. Mr. Mantis.

Q. Mr. Mantis? A. Yes.

Q. And did you also communicate with Mr. Kreiselman? 2091 A. I don't think I did.

Q. Whose client was he? A. He simply fell in line with Schwart & Zuckerman and Ribach & Mantis in opposing Hoffman from continuing with his assignment, in trying to get him to cooperate towards getting a substantial and prompt settlement, and failing to obtain that cooperation from Mr. Hoffman, he joined with these two creditors and Mr. Levy in filing a petition and agreed with these creditors in having it withdrawn so that this 40 per cent settlement could go through.

2092 Q. Now prior to the filing of the involuntary petition in bankruptcy and prior to the time that you signed the involuntary petition in bankruptcy as attorney for Schwartz & Zuckerman and Mantis, did you have a conversation with Teddy Goldman? A. Yes, certainly. I testified to that yesterday.

Q. Will you tell us now what that conversation was? A. I told him that my people had called me up on the phone and told me that they had sent over different people to the store to look at the stock, appraise it and bid on it, but that whenever they called up Mr. Hoffman to find out whether he would take further steps to effectuate the original
2093 plan of having a settlement, rather than to go through with the assignment, that he was not in and failed to call them back; that they had these disappointing experiences with Mr. Hoffman for at least three or four or five days. I told him further that I had called up Mr. Hoffman on or about April 2, 1937, and that I had a similar experience in that he was supposedly out or not in and never called back, and that my people wanted to file a petition in bankruptcy against Mr. Hymowitz so as to prevent Mr. Hoffman from further carrying on the assignment proceeding to which they objected, and I asked him whether his client would be
2094 of the same mind, whether he would join these creditors in an involuntary petition in bankruptcy.

Q. Is that all? A. And he said he would find out and he would call me back.

Q. And did he call you back? A. Sure, he did.

Q. And what did he tell you? A. And he said his client would join my creditors in stopping Hoffman from proceeding with the assignment and throwing it into bankruptcy unless there was a settlement effected.

Q. Did he mention Kreiselman? A. Who?

Q. Teddy Goldman.

Mr. Fielding: Your Honor, this has all been gone through several times. 2095

Mr. Walsh: No, if your Honor please.

The Court: I don't remember that question.

Mr. Walsh: It was not.

The Court: I don't want to go over anything that has been gone into. But I will overrule the objection to that particular question. I don't recall it.

A. I mentioned Kreiselman to Teddy Goldman in that my creditors told me that A. Kreiselman & Son would join—

Q. Go ahead. A. In that A. Kreiselman & Son, according to my creditors' information to me, or my clients' information to me, would join them in the involuntary petition. 2096

Q. When did you first find out about the relief tickets, Mr. Schulman, that were going to be into the estate?

Mr. Fielding: I object to the question.

The Court: Yes. I will sustain the objection. That was gone into yesterday on cross examination.

Q. Well, you knew on April the 20th, 1937, that there were relief tickets? A. That's right, sure.

Q. And this is only as $1200 to L. Wein? A. This what?

Q. This bill of sale. A. The bill of sale covered stock and fixtures only, and the receipt——this bill of sale was turned over to me. It is dated April 20th, but it was given to me on April 26th. The bill of sale covers stock and fixtures only and then there is a separate paper which Mr. Hoffman gave me with respect to the food tickets. He even said on April 21 in the minutes—he said, "I'll try to type some kind of a receipt or a method of collecting the $300 relief tickets because they were non-transferable, non-assignable." That is what he said in the minutes of April 21. 2097

Q. Do you remember yesterday at page 597 I asked you this question:

"You say that Theodore Goldman drew this petition, being Government's Exhibit 3," which was the petition in bankruptcy. "A. I didn't say that. I told you he handed me it to sign. Whether he or X Y Z drew it up, I don't know. I told you that before."

And then the next question, I said, "I am sorry." And then you said, "Well, I accept your apology."

Do you remember that? A. Yes.

Q. And then do you remember this question was also asked you: "Who is the legal draftsman," referring to the petitioner? A. That is right.

Q. The petition in bankruptcy. And you said, "Theodore Goldman, I say he did it."

Mr. Corbin: If your Honor please, only in the interests of time saving—

The Court: Are you fixing a predicate to impeach him? If not, I don't want to go over what he has testified to already.

Mr. Walsh: It is impeaching it, and I have one more point.

The Court: Very well, I will overrule the objection at this time.

Mr. Corbin: He is just reading him his testimony of yesterday.

Mr. Walsh: It is impeaching—

The Court: Well, you need not read yesterday's testimony. The jury recalls what he testified to on cross examination yesterday or at least it is their function to remember, and they will recall what he testifies to this morning, so I am not going to permit you to read all of your cross-examination.

Mr. Walsh: No, I didn't intend to. Just one more point, if your Honor pleases. 2101

The Court: Very well. We will recess this case until 11 o'clock. The jury may be excused until 11 o'clock while we call the criminal calendar.

(Short recess.)

Mr. Corbin: If your Honor please, the cross-examination has been more protracted than we expected. We have here a witness who has come from Chicago and he wants, if possible, to take the one o'clock plane back to Chicago.

The Court: Is there any reason, Mr. District Attorney why we should not hear that witness out of order? 2102

Mr. Walsh: Absolutely not.

The Court: Then I will take him now, Mr. Corbin, if you wish.

Mr. Corbin: Thank you.

(Witness temporarily withdrawn.)

SEVERIN FRANCIS SCOTT, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. You are a lawyer? A. No, sir, I am not. 2103

Q. What is your business? A. I am the travelling representative of the Attorneys National Clearing House, a law list approved by the American Bar Association.

Q. You are in attendance now at some convention in Chicago? A. Yes, sir, the Commercial Law League of America.

Q. You flew here from Chicago to testify in this case and you would like to leave on the plane at one o'clock to Chicago? A. Yes, sir, 1.05, to be in time for the final dinner.

Q. We have been talking about the Hymowitz matter

2104 here. Did you have to do with that in any connection? A. Yes, sir.

Q. What? A. I represented Endicott-Johnson, through the corporation I worked for or was vice-president of.

Q. And did a time come when you heard about a proposal of 40 per cent to the creditors, by way of bulk sale of the assets? A. Endicott-Johnson got a notice of the bulk sale of the assets of Hymowitz for 40 cents on the dollar.

Q. And what was your attitude as to that, representing Endicott-Johnson? A. That we would take the 40 cents, as we do in any case, but without a release. We don't give a release. We always have a no policy compromise,
2105 except in very few cases.

Q. So following your client's general policy with respect to accepting settlements, but not giving a debtor a release, you got in touch with somebody or made some move in the Hymowitz matter; now what did you do? A. When I got that notice I called up Mr. Hoffman and told him—

Q. Is that Robert Hoffman, the attorney for the assignee? A. Well, the attorney for the debtor and the assignee, that s right, he represented both.

Q. Tell us what you said to him. A. I called him up, and I told him I would not take a settlement and give him a release. He asked why. I said because he had
2106 been down to Endicott-Johnson's and promised to return the shoes. At the time Hymowitz bought the shoes, Hoffman knew he was insolvent and therefore we were entitled to get the shoes back.

Q. What was the amount of your claim? A. About $230 or $235.

Q. All right. Is that all that was said at that time? A. On the phone Hoffman had said he would work out something whereby we would either get a settlement—or rather, he told me on the telephone "I will think that over." I kind of forget now because I had two conversa-

tions with him. The first one he said he would try to work out something that would satisfy Endicott-Johnson but first wanted to protect Hymowitz, who was at that time in jail, I think. 2107

Q. Thereafter did you make some motion in court? A. On behalf of Endicott-Johnson, Isadore Siegel made a motion to remove the assignee and the attorney for the assignee, because they admitted they represented the bankrupt. I think he was dismissed from bankruptcy at the time and Siegel got that information from a petitioner, that he represented him. One represented the wife and the other the husband, which way it was I don't know. That is about three years ago. 2108

Q. You made the application to remove the assignee? A. Yes, sir.

Q. And that was Kolman, the assignee, do you recall? A. That is right.

Q. And upon what ground did you make that application? A. I just told you because he represented the debtor Hymowitz, and he was not the proper man to represent the creditors.

Q. That Hoffman was not the proper man? A. Mr. Hoffman and Kolman both represented Hymowitz and the debtor's wife.

Q. Did that motion come on to be heard? A. I think it was adjourned. 2109

Q. And did a conference occur somewhere with respect to that motion? A. Well, it was adjourned. I don't know the exact date it was adjourned to, but it was adjourned to a day or two after Decoration Day. The reason for the adjournment was because a conference was called at Goldman's office, and Teddy Goldman asked me to come over there.

Q. Did you go? A. I did.

Q. When you got there who were present at the con-

2110 ference? A. The auctioneer Wishbow, Kolman, Hoffman and Theodore Goldman.

Q. And yourself? A. Yes, sir, when I got there.

Q. And will you tell his Honor and the jury what the talk was among you gentlemen there? A. Well, Teddy Goldman tried to sell me the idea that 40 per cent would be the best we could get out of it, and he did sell it to me. He said, "What do you want?" I said, "I will take 40 per cent, without a release." We were not going after Hymowitz then because I understood he was in jail. I said "I think he has got some money and according to the way we look at it, he has got assets, but we will
2111 go after him." I said, "We will take the 40 per cent and give the creditors the 40 per cent, we will dismiss the thing and go after Hymowitz when he comes out of jail."

So Hoffman said, "No one will give it to you." I said, "Why?" He said he represented Hymowitz. I said, "That is the reason you are double crossing the creditors, when you are representing Hymowitz and when you are representing the assignee. I think you are a shyster, and I am going to 44th Street and have you removed."

Q. What is that, 44th Street? A. The Bar Association. I got hold of Teddy Goldman and Teddy Goldman asked
2112 me down. He said, "What will you do if liquidated under an assignment?"

I said, "It is all right with me, but these fellows cannot liquidate. I cannot trust them." We argued there for some time, and he said, "What do you want?" I said, "I want somebody to sell the assets so when they are sold the creditors will get all that is coming to them." I felt that Hoffman was representing the debtor, and he would not give the creditors a break, no attorney would.

He said, "What else?" I said, "I want them out of the picture.

Q. To whom did you refer? A. I wanted the auctioneer and Kolman and Hoffman, because as far as I knew then Goldman was not in the picture. At that time he was trying to reconcile the thing so as to make the best settlement for the creditors. 2113

Q. You mean at that time he meant—

Mr. Walsh: I object to what he meant.

The Court: Sustained. Let him relate the conversation, if any.

Q. What else was said? A. I insisted they step out of the picture entirely. Teddy Goldman then said "Why cannot we do it some way?" And I said "Hoffman was getting a fee as representing the debtor. Why get a fee this way? They would get the creditors' money. But any attorney you fellows back is all right with me. I want an auctioneer to sell the stock and the proceeds to go into the estate, to be accounted for." They would not do anything. 2114

Teddy Goldman said "Do you object to us?" I said, "No, it doesn't make any difference, but I will never stand for a debtor's attorney liquidating an estate. I never have and I never will.

Q. Mr. Hoffman has been a witness in this case. Page 250 of the record he testified to a conversation, and without reading it all, the substance of it was that there was some talk. He said that it was finally decided another auctioneer ought to be brought into the picture and that that would pacify this chap. Severance Scott, or Scott Severance, or whatever his name was, so that he could get his cut out of it by way of that. Previously he said there was some talk about giving Mr. Severance or Mr. Scott, $25 or $50 for him to withdraw that. Was there any talk or did you hear from any source at any time any suggestion by anybody that you be given 2115

2116 $25 or $50, or an other sum of money to withdraw your motion? A. I did not.

Q. Did you ask or demand in any respect or any manner any cut for your part in withdrawing that motion? A. I did not. In the first place, I could not get it—

Mr. Walsh: I object to that, "in the first place."

The Court: Objection sustained.

Q. Is there any truth in that? A. Absolutely not.

Q. And you had no interest in this case? A. Absolutely not.

2117 Q. It was you who suggested the other auctioneer, was it not? A. I suggested the auctioneer that did the work for Endicott-Johnson Corporation.

Q. And his name was or is what? A. Lipkowitz—Edward Lipkowitz.

Q. Was there talk about his advent into the picture increasing or not increasing the expenses? A. No, he was willing to do it without any cost because of the work he got from the Endicott-Johnson Corporation.

Mr. Corbin: Thank you.

Cross examination by Mr. Walsh:

2118 Q. What corporation did you represent, Mr. Scott? A. The Endicott-Johnson Corporation.

Q. I mean the corporation with which you are connected. A. The Constructive Adjustment Company.

Q. That is a collection agency? A. That is right.

Q. And what was your function there? A. Vice-president in charge of the New York office.

Q. What were the duties of this collection agency? A. Collecting accounts of various creditors we represent.

Q. And if any legal action had to be taken would you confer with the attorney? A. No. The creditors would hire the attorney.

Q. Who is Siegel that you mentioned? Did you hire him? A. Siegel is an attorney on a law list that handles Endicott-Johnson's accounts and handles it today and when they see fit to send it to him. 2119

Q. Did you recommend Mr. Siegel to Endicott-Johnson, that he make this motion? A. I did not.

Q. You related what you knew to Endicott-Johnson Corporation and they in turn went out and got Siegel? A. They have him, the arrangement is that when they have any legal matter they say who the attorney is that it is to be given to. Even today there is an agency in Boston that handles their stuff, but it is given to Siegel right away, if it is a legal matter. 2120

Q. How long have you known Martin Goldman? A. 15 or 18 years.

Q. And how long have you known Theodore Goldman? A. Oh, I think about 10 years, maybe.

Q. Do you know Jacob Schulman, too? A. I met him.

Q. How long ago? A. I don't know exactly, but probably since 1932 when this corporation was formed.

Q. And on occasions, because of your collection work, I presume you have had dealings with Martin Goldman and Theodore Goldman? A. Claims have been sent to them.

Q. Did you recommend them? A. No. Endicott-Johnson has the law list and they take the attorney from that list. 2121

Q. You said a few moments ago that you didn't know Martin Goldman was in the picture until when? A. At that conference, when it was almost over, when they suggested something as to lawyers and I said "No attorneys representing creditors," and then they told me they had a retainer as co-attorneys.

Q. Was Mr. Siegel at this conference? A. No.

Q. You were representing Mr. Siegel? A. No, just representing Endicott-Johnson Corporation.

2122 Q. Mr. Siegel was the man who made the motion? A. He was the attorney.

Q. He didn't attend the conference? A. No.

Q. That was your function? A. Well, the credit man's or mine.

Q. Where was this conference held? A. In Theodore Goldman's office.

Q. Do you know when? A. I should say a couple of days before, a day or two before the case was to come on.

Q. In other words, the return day of the motion? A. That day or the day before; I think it was the day before.

Q. How did you happen to go up to Theodore Goldman's
2123 office? A. He called me on the telephone.

Q. What did he say to you? A. He asked me to come over there, that he had Kolman and Hoffman and the auctioneer down there.

Q. For what purpose? A. To discuss the question of the motion that Siegel had made. In other words, why Endicott-Johnson Corporation had made it, and if we could not work it out so that the creditors got the best settlement, which was 40 cents on the dollar.

Q. At that time it was 40 cents on the dollar? A. Yes, sir.

Q. You said that Teddy Goldman sold you the idea that you should withdraw this particular motion, is that
2124 correct? A. He sold me the idea?

Q. Isn't that what you testified to on direct? A. No.

Q. What idea did he sell you? A. That the 40 per cent was the best we could get in view of the assets and liabilities.

Q. Well, was it decided at that conference that the motion would be withdrawn? A. No.

Q. It was never argued, the motion on the return day? A. After they arranged for the auctioneer to go in there, then it was decided to withdraw the motion.

Q. After the conference it was then decided to with

draw the motion? A. Well, we were in there and the auctioneer came in, they had to bring him in to ask him. I called him up and brought him over there. 2125

Q. What is his name? A. Edward Lipkowitz.

Q. Was this at this conference? A. I only had one conference at Teddy Goldman's office, the only time I was there.

Q. A couple of days prior to the motion it was decided to call up someone? A. Yes, sir, that is right. I called up someone at Endicott-Johnson Corporation, and it was agreed that we should let it go through assignment, because we could sue the debtor in February, after he got out of jail, and probably collect the balance. 2126

Q. Now, did Theodore Goldman tell you that the firm of Goldman, Malter & Goldman were going to be retained as attorneys at that time? A. At that time, that is why I consented to it. He said "We have a retainer."

Q. They were all retained? A. I figured that happened before I got over there.

Q. It was the same day that they were retained? A. I never saw the retention, I don't know.

Q. They just told you that? A. Yes, sir.

Q. Was Martin Goldman at that conversation? A. No, sir. 2127

Q. Did you ever have any dealings with Martin Goldman? A. In this matter?

Q. Yes. A. No, sir.

Q. Did you ever have any dealings with Martin Goldman in any other matter? A. I discussed many matters that we sent to his firm, regular collection matters, that a client had sent. That we discussed with him. In other words, we sent matters to the Goldmans if they were important. Small matters we never did.

Q. On that occasion and after calling Endicott-Johnson it was decided at that conference you would dismiss the

2128 motion? A. Yes, sir, if the auctioneer went in, and an attorney representing the creditors went in as co-attorney, the motion would be dismissed.

Q. And at this time you deny that Mr. Teddy Goldman told you that he would give you $50 if you would withdraw the motion? A. I would spit in his face if he did.

Q. You withdrew the motion that day? A. I don't know how it was withdrawn, legally.

Q. Nobody appeared on the return day? A. Siegel took care of that. I phoned Siegel right from the office. I don't know how it was done.

2129 Mr. Walsh: Thank you.

Redirect examination by Mr. Corbin:

Q. There has been something said about Teddy Goldman stating his idea that 40 per cent was fair to the creditors. A. Yes, sir.

Q. You had made some inquiry or some investigation yourself about the stock and the situation of that estate, had you not? A. Yes, sir, that is right.

Q. In fact—

Mr. Walsh: I object to these leading objections.

2130 The Court: Objection sustained.

Mr. Walsh: I would like to hear him testify himself, the witness.

Q. Were you ever in the store of Paul Hymowitz? A. Yes, sir, I was.

Q. Did you see the stock in that store? A. I did.

Q. Did you know and have experience with stocks of that general character, in the course of your business over the years? A. Yes, sir.

Q. And did you know and had you heard that many times—

Mr. Walsh: I object to this as being leading. 2131

The Court: Yes. Objection sustained.

Mr. Corbin: I don't know any other way to qualify an expert.

Mr. Walsh: Ask him his experience.

The Court: He can tell you. But I say that was a leading question.

Mr. Corbin: Well, I suppose everybody knows just what it was going to be before it was finished. But let me ask you this. I will take one other try at it, your Honor.

The Court: All right.

2132

Q. Did you or did you not in your experience, prior to April of 1937, see such stuff sold and know prices that were paid for such stuff both at public auction and private sale in and about the City of New York? A. Yes, sir.

Q. And from that experience what in your opinion was the fair sales value of—

Mr. Walsh: I object, your Honor—

Mr. Corbin: I have not finished the question.

Q. —of the stock in the Hymowitz store?

Mr. Walsh: I object. He has not qualified him as an expert yet. 2133

The Court: I will overrule the objection.

A. Well, I looked over the stock and the stock would probably bring I felt at that time about a thousand or twelve hundred dollars.

Q. So when you say that Teddy Goldman sold you the idea that 40 per cent was all right, you also had some idea of the value of the stock yourself? A. Well, what I meant by that was this, that the thousand dollars or the twelve hundred dollars that would bring, from the figures I had at that time, that would have brought at least 40 or 50

2134 per cent, but when a thing is all gotten together, the additional claims of money, loan claims, would not have brought that, or that amount of money and therefore Teddy Goldman figured that even if we didn't give a release, that 40 per cent would be more than we could get any other way. He explained to me how the debtor was in jail and we could never collect.

Q. You felt that was fair? A. Yes, sir, as far as the other creditors were concerned, but not as far as Endicott-Johnson were concerned.

Recross examination by Mr. Walsh:

2135 Q. Were you at the sale when the stock was sold? A. Yes, sir.

Q. How much did it bring? A. I don't know. I didn't tabulate the assets.

Q. Would it refresh your recollection if I told you it brought about $1500? A. Yes, sir, that is right, about that.

Q. And how long have you been evaluating the value of merchandise, how many years? A. Sixteen years.

Q. Is it your duty for Endicott-Johnson to find out how many pairs of shoes they have? Are you an expert in shoes? A. In shoes more than anything else.

2136 Q. And approximately how much per cent of the goods at Hymowitz's store were shoes? A. I don't recall right now.

Q. Approximately. A. I couldn't make a figure. I would not be able to tell the truth. That happened several years ago. I don't know the number of shoes. I know $1500 surprised everybody.

Q. They did get $1500? A. Yes, sir, that is the reason, because of this fight.

Mr. Walsh: That is all.

(Witness excused.)

JACOB P. SCHULMAN, resumed the stand. 2137

Cross examination continued by Mr. Walsh:

Q. Do you remember yesterday, Mr. Schulman, I was talking about a conversation that you had on the telephone on April 7th, 1937, I am reading from page 688 of the record:

"Mr. Fielding: That isn't the finish of the sentence.

"Mr. Walsh: I am sorry.

"Q. (Continuing) 'I figured Goldman would get thirty-three hundred for it.' Does that refresh your recollection? A. That refreshes my recollection to a point of definiteness 2138
and positiveness that there was no mention at all about $3300 in the Hymowitz case.

"Q. Was there any mention of $3300 in the Needleman case? A. Might have been because—

"Q. Well, was there? A. I think so. He had a $600 stock"—

The Witness: $6000 it should be.

Mr. Walsh: $6000.

Q. (Continuing)—"Q. So now you are definite"—

Mr. Corbin: I object to just reading what the 2139
witness testified to.

The Court: I am going to allow him to finish this question and see what it is, first, Mr. Corbin.

Q. (Continuing) "Q. So now you are definite that this refers to the Needleman case? A. That is my best judgment, that it does refer to the Needleman case."

Do you remember testifying to that? A. Yes, sir.

Q. That was the conversation you had on April 7th, Mr. Schulman, on April 7th, 1937?

Mr. Corbin: I object to it, your Honor.

2140 The Court: Objection sustained.

Q. Well, we were referring to the conversation that you had over the telephone with a Mr. A, whoever he may be, and that was in response to that question when I asked you—

Mr. Corbin: I object to that.

The Court: Sustained.

Q. Did you say, or did you make those answers I just asked you about?

Mr. Corbin: I object to that as already having
2141 been asked.

The Court: Objection sustained.

Mr. Walsh: Now on Government's Exhibit 21-A, if your Honor please, I will have to go further, to see if it refreshes his recollection.

The Court: You can ask him anything you have not already asked him. He made those answers yesterday and the jury is supposed to remember the answers, and I suppose they do at least remember the substance of them. However, I am not going to permit you to read over the testimony. This case has got to be ended some time.

2142 Mr. Walsh: It will be ended very shortly.

The Court: I don't mean to cut you off, please understand that, Mr. Walsh. I don't want to cut you off. Any cross examination you have not gone into, I will allow you to go into it, but I am not going to permit you to read the testimony that he went over yesterday.

Mr. Walsh: I ask that this be marked for identification.

(Marked Government's Exhibit 23 for identification.)

Q. Now yesterday you said you represented the Mr. 2143
Needleman, the auditor and the president of the First 88 Cents Stores, Inc., is that correct? A. Yes, sir.

Q. And was Samuel W. Fisher the attorney for the petitioner? A. The attorney for the petitioner and creditors who filed an involuntary petition.

Q. Now I show you Government's Exhibit 23 and I ask you the date when that petition of the First 88 Cents Stores was filed. A. According to the stamp here, April 19, 1937.

Q. And that was after April 7th? A. Naturally.

Q. Well, is there any doubt in your mind it was filed on April 19th? A. No doubt at all. 2144

Q. And it was filed at 12.10 p. m.? A. Exactly, but before a petition is filed—

Q. Now I show you Government's Exhibit 23, it is an order to show cause, and I ask you whether or not that is your signature? A. It is.

Q. And this is in the case of or in the matter of the First 88 Cents Stores, Inc.? A. That is right.

Q. And the petition in bankruptcy was dismissed in this case also, wasn't it? A. It was dismissed by me against Mr. Fisher before Judge Patterson.

Q. For a jurisdictional defect? A. No.

Q. What was it dismissed for? A. Because the petition 2145
of the creditors didn't have claims aggregating $500.

Q. That is a jurisdictional defect? A. That the allegations in the pleadings were not as required by law.

The Court: 88 Stores?

Mr. Walsh: 88 Cent Stores.

Q. Wasn't the jurisdictional defect other than in the affidavit, instead of being over $500 that the claims of the various petitioning creditors were only $473.51?

Mr. Corbin: I object to that.

Mr. Walsh: That is a jurisdictional defect.

The Court: I sustain the objection on the ground that the document speaks for itself.

Q. You signed the affidavit in the 88 Cent Stores case, is that correct?

Mr. Corbin: I object to it. He already said he did.

The Court: I will overrule the objection.

A. Yes, sir.

Q. And Government's Exhibit 3, in Hymowitz's case, Robert Hoffman signed it? A. Apparently.

Q. And this was prepared by Teddy Goldman, is that correct?

Mr. Corbin: Referring to what?

Mr. Walsh: Referring to Government's Exhibit 3 in the Hymowitz case.

A. I said I signed it at his office.

The Court: Wasn't that gone over ten or fifteen times?

Mr. Walsh: This is Robert Hoffman.

The Witness: May I withdraw my answer?

The Court: That has been gone into a number of times. He admitted he signed it in Goldman's office, and that he didn't know when it was drawn.

Mr. Walsh: That is all.

Redirect examination by Mr. Fielding:

Q. I hand you the original of Government's Exhibit 8, and you will note that is a bill of sale for $1200? A. It is.

Q. In April? A. That is right.

Q. In which the name of L. Wein is written in by somebody? A. That is right.

Q. Well, you read a lot of items that were going to be given to that auctioneer for $1200— 2149

Mr. Walsh: I object to that as improper redirect examination. That has been gone into, and he has answered that twenty times.

The Court: Yes. My recollection is it has been gone into.

Mr. Fielding: It is in evidence.

Mr. Walsh: And I will concede it does not say anything about city sales taxes.

Q. And the letter, bill of sale for $1500 which is dated in May, contains a specific reference to the accounts payable? A. Accounts receivable. 2150

Q. And that item represents the food tickets? A. Yes, sir.

Q. You were interrogated about three sheets of paper executed in triplicate, one a receipt for a bill of sale, and one for food tickets, separately. A. Yes, sir.

Q. I show you a paper and ask you if you signed that? A. I did.

Mr. Fielding: I offer it in evidence.

Mr. Walsh: No objection whatever.

The Witness: I think it is in evidence. 2151

Mr. Walsh: Yes, that is already in evidence.

Mr. Fielding: I didn't know that was so.

Mr. Walsh: Yes, that is in evidence. Wait, I will check it up. Yes, they are all in evidence.

May I see that one for a second?

Mr. Fielding: Yes (handing to Mr. Walsh).

Q. Now I show you a paper and ask you if you have seen this before? A. A. I did.

Mr. Fielding: I offer that in evidence.

2152 Mr. Walsh: Well, if your Honor please, may I examine the witness preliminarily as to this?

The Court: Yes.

By Mr. Walsh:

Q. When was this paper given to you? A. Shortly after the registered letters were sent by the Dry Goods Association.

Q. There is no date on this letter? A. It was enclosed with that letter of May.

Q. Is there any date on it? A. I don't know.

Q. I show you and ask you whether or not you can tell
2153 me definitely when that was received by you. A. Yes, sir.

Q. When? A. Within about a week of the May, 1937 letter, which was sent out by the Dry Goods Association, which is in evidence in this case.

Mr. Walsh: Then I have no objection to it.

Q. It is not notarized? A. No.

Q. Should have been? A. No, sir.

(Marked Defendants' Exhibit D.)

The Court: Are you going to read it to the jury?

2154 Mr. Fielding: Yes, your Honor.

(Mr. Fielding reads Exhibit D to the jury.)

By Mr. Fielding:

Q. Now the document you just identified and which is now Defendants' Exhibit D, was attached to papers now in evidence and known as Government's Exhibit 15, being a letter from the Dry Goods & Furnishing Association to the creditors of Paul Hymowitz, dated May 13, 1937, and a notice about the sale, is that correct? A. Yes, sir.

Q. Now reference was made in your cross examination

to the fact that you spoke up about the landlord is entitled to a check? A. Yes, sir. 2155

Q. Will you explain what you meant by that?

Mr. Walsh: I submit that has been explained fully.

The Court: I overrule the objection.

A. The landlord is entitled to full payment as a priority creditor during the time the assignee was in possession of the premises in question.

Q. Was he the only one that was to get a check? A. All the creditors were to get a check. 2156

Q. Now have you any present recollection concerning the Needleman case with reference to filing that petition? A. Certainly.

Q. Will you explain it? A. Prior to the filing of the petition in bankruptcy some creditors were dissatisfied with the payment of 20 or 25 per cent. I think it was 20 per cent, in addition to the 60 per cent they thought they could get more.

Mr. Walsh: Can I get the date of that?

The Witness: It was about a week or ten days before the petition was actually filed. I think there was some dissatisfaction even before I got into the picture, because there was a meeting of the creditors at the Dry Goods Association and in order to meet any possible objection on the part of creditors, I was retained or employed in the case, so that whatever steps might have to be taken, in the event of filing a petition, or what not, or if the creditors wished an examination of the premises or of the stock, I could arrange those, and any other incidental detail. 2157

Mr. Fielding: That is all.

2158 By Mr. Corbin:

Q. One subject I want to ask you about. I call your attention to April 7th when Martin Goldman was in your office. Mr. Hoffman when he was here on the stand he said that—

Mr. Walsh: What page?

Mr. Corbin: Page 95.

Q. —in response to Mr. Schachner's question:

"Q. Did the defendant Morton M. Goldman stay until the end of the meeting? A. He did not. He said he was going
2159 to leave, and before he left Mr. Schulman asked him to wait outside. Mr. Schulman left the office, Goldman left the office, and some few minutes later Schulman came back.

"Q. And what did the defendant Schulman tell you after he came back? A. He told me that he spoke to Mr. Goldman, Morton Goldman, and had told him what Mr. Schulman had discussed with me, the time that I was last at his office, and he told me that Morton Goldman was afraid to speak before me, but that he was amenable to going through and that he would carry out whatever was agreed upon or arranged."

Did anything like that occur? A. No, sir.

2160 Q. Did you see in your examination of the FBI man's notes here anything indicating any such occurrences?

Mr. Walsh: I object to that. The exhibit speaks for itself.

The Court: Objection sustained.

Q. Did Martin Goldman say to you at any time that he was afraid to speak before Hoffman? A. Not at all. He spoke good and loud and plenty.

Mr. Corbin: That is all.

Mr. Walsh: May I have just one moment more, your Honor?

The Court: Yes. 2161

Mr. Walsh: No further cross examination, your Honor.

The Court: Stand aside.

(Witness excused.)

SAM RICH, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Your age? A. 46.

Q. Residence? A. 2460 Davidson Avenue, Bronx.

Q. Occupation? A. Salesman at present. 2162

Q. Have you had experience in the past with the purchase and the sale of goods of the general character sold in an army and navy store? A. Yes, sir, I have had twenty years experience in that line. I had my own stores, and I am acquainted with the purchasing and selling of it.

Q. You are acquainted with stores that have such stocks in this vicinity we are referring to? A. I am.

Q. And that applies to 1937 and prior? A. Yes, sir, since 1919.

Q. Do you know Paul Hymowitz? A. I do.

Q. Do you know Mrs. Paul Hymowitz? A. Well, that was my sister; at that time she was Mrs. Paul Hymowitz. 2163

Q. In 1937, April, March, February, your sister was married to Paul Hymowitz, the debtor, is that right? A. That is right.

Q. Did you attend a family conference so-called of the Hymowitz family with regard to the stock—

Mr. Walsh: This is all leading, your Honor. I think the witness should be allowed to testify what he remembered.

The Court: I will overrule your objection to this extent; it is more or less preliminary.

2164 Q. —at 346 Bowery? A. I did.

Q. When? A. About two or three days following the conviction and sentence of Paul Hymowitz, my sister called me at my house. At that time I lived with my mother.

Q. Where was this conference held? A. 346 Bowery.

Q. In the store? A. In the store. A few days following the sentence. I was there merely to discuss what should be done with the stock, how we are going to operate the store and what should be done with it. So that was on a Sunday when she called me, and I said I will be there about one o'clock. I got there about that time, and started to take stock.

2165 Q. Now who was present? A. Mrs. Paul Hymowitz, his sister Ann, that is Paul's sister, my sister, who was Mrs. Hymowitz, my brother Charles and myself.

Q. Now what did you do in the store that afternoon? A. Well, I got in there about one o'clock and I started to take stock and during the course of the afternoon I was interrupted by some customers coming in, to whom I made a few sales, sold probably about seven or eight dollars worth of goods.

Q. Do you think this was on Monday? A. I think so, I am not sure.

2166 Q. Following the Sunday she phoned you? A. Yes, sir, I think so, I am not sure of that.

Q. It was late in March? A. That must have been four or five weeks after she was married, right after that he was convicted.

Q. Now when you say that on the afternoon you took stock, just tell us what you did. A. Well, I started to take stock, and when we take stock, we do it on certain boards, which we have, short cardboard boxes, and we take the sides off and lift the top or both sides up and we start to take inventory of everything. My brother assisted me. We three were talking about Paul Hymowitz, four of

us, his connections, etc., and I was taking stock all afternoon, with the exception of the time I went out to get a bite at about five o'clock. In the meantime his brother Sam, Paul Hymowitz's brother left about five o'clock. I remember Mr. Hoffman coming in. 2167

Q. Now is that Robert Hoffman, the attorney? A. Yes, sir, that is the fellow that was here.

Q. That was about five o'clock or thereabouts in the afternoon? A. Yes, sir.

Q. He came into the store? A. He came into the store. I was introduced to him. I had never met him before. He asked me "How is your stock?" I said, "I am not completed with it yet. I am taking an inventory of everything." After all my sister had got an interest in the business and I wanted to know what it is going to be. 2168

We were there until seven o'clock. In the meantime Hoffman asked me about the prices. I said, "You take out a file." There were two files, one a paid file and one unpaid.

Q. What do you mean by that? A. Paid and unpaid bills. Those prices you cannot find in the bills. I said to him, "You ask me, and I can tell you. I know this type of goods. I know where you buy it and know what you sell it for." Well, that went on until about seven o'clock.

Q. What went on? A. My stock taking. 2169

Q. That is from five until about seven o'clock? A. No, from about one to seven o'clock, it took me six hours.

Q. From five to seven Hoffman was there? A. Yes, sir, he was there from five until we closed up the place.

Q. And did he take down some figures and help you? A. Yes, sir, he helped me with the arithmetic. For instance four dozen shirts at $8.50, he would figure it out $34, or whatever it amounted to.

Q. Did you go through that complete stock and take an inventory of it? A. I took a thorough inventory of it.

Q. And was he, Hoffman, there during the last two hours

2170 of that work? A. Yes, sir, he was present right there.

Q. Now when you got through did you total it up? A. Yes, sir, we totalled up the figures, at cost prices.

Q. Who are "we"? A. Hoffman, I think my brother was present also, everybody there, in fact everybody that was there joined in and inquired about the figures and what did they amount to.

Q. Were they put down on paper? A. On the cardboard.

Q. And what became of the cardboards, by the way? A. The last I saw of them was when Mr. Hoffman took them with him.

Q. Now what was the total that you figured? A. To be
2171 correct, between eighteen and nineteen hundred dollars, at cost.

Q. That is what I was going to ask you. Did you figure the inventory at cost? A. That is correct.

Q. Taking the cost price from the bills, so far as they went—

Mr. Walsh: I object to counsel leading the witness. I think he should be permitted to say how he got the figures and how he arrived at the totals.

Mr. Corbin: I am just cutting it short.

The Court: I will overrule the objection.

2172 Q. How did you get the cost price? A. We took it out of the bills.

Q. And the total you say was what? A. Between eighteen hundred and nineteen hundred dollars, to be correct.

Q. Now that total cost was figured and totalled in Hoffman's presence? A. In his presence, in fact he helped me to get the totals, the right figures.

Q. Did he talk to you about it at the time? A. Yes, sir, sure.

Q. And you talked to him about it? A. Yes, sir, I was there, representing my sister who was Paul Hymowitz's wife.

Q. What if any conversation did you have with Mr. Hoffman at that time with respect to the value of the stock? A. I showed him after all we were discussing what to do with the store, it was a family conference and I said to Mr. Hoffman, "Here we have eighteen hundred or nineteen hundred dollars worth of merchandise." I appraised it to bring between eleven and twelve hundred dollars at a sale and before that we had a discussion about the relief tickets, and the relief vouchers. He said, "You must forget about the relief tickets because of the fact Paul Hymowitz went to jail, on the ground that he obtained these tickets by fraud, and the relief tickets are not worth the paper they are written on, because the City said he was going to contest them." That was that $500 worth of relief tickets.

Q. That is what he was talking about? A. Yes, sir, we discussed the best thing to do. I told him as far as my sister was concerned in this matter it is a matter of a short time before the creditors will close up the place, because if they get to know that the man is in jail they will sue him for goods sold and delivered and in addition to that I said, "How possibly could this woman go on with this store, I didn't know and one thing I didn't want to see my sister selling things on the Bowery to that element there."

We got down to figures. We also took from the files the amount of money due and came to the figure of twenty-three or twenty-four hundred dollars and I showed them if it does bring $1200 on the sale that where there are administration expenses that by the time you wolves get through with it the creditors are not going to get anything, probably wouldn't get anything, at most 30 per cent tops. I said the only thing to do is throw it back to the creditors, and I will show you the exact figures I showed him. I do remember that.

2176 Q. You are going to show us what you did and what you put down in your talk with Hoffman?, A. Yes.

Q. On that occasion? A. That is correct.

Q. All right, go ahead. A. I showed him that with liabilities there amounting to about $2400, and then I knew he had a loan there—we knew about the loan, about $200 to the National City Bank, he owed.

I said, "Let's say $2500." I says, "The stock will bring $1200, let's say, it brings a lot of money, $1200. You say the relief tickets are out. You will scratch that off." I said, "Administration expenses will be at least $400. That will leave $800. You owe $2500. By the time you get
2177 through," I says, "you will probably give 30 per cent to the creditors. We wash our hands of this," and the fact is my sister here who gave $500, gave Paul Hymowitz $500 at the time of the wedding as a dowery, we waived her claim too. I didn't want her to be called as a witness and so we washed our hands of it, and I showed them that they wouldn't get more than 30 or 35 per cent, and I know it for a fact. That is all they could realize.

Q. And that was the talk, the substance of your talk with Hoffman on the occasion? A. Oh, sure. I knew what this administration is in those matters. I know how that's
2178 worked, how it goes on. I have been in this business long enough.

Q. Did Mr. Hoffman on that occasion say anything about getting around 100 per cent for creditors? A. He couldn't say that when I showed him—I just showed him there was no moneys.

Q. Did he say anything about, 100 per cent or 80 per cent? A. Oh, no, it's impossible. Even Einstein couldn't figure that out.

Mr. Corbin: Your witness.

Cross examination by Mr. Walsh: 2179

Q. Your memory is pretty good, isn't it, sir? A. As far as that is concerned, yes.

Q. With whom did you speak about this case recently, Mr. Rich? A. Well, the first—the first person I spoke to this case was really Mr. Kandell. I had met him in the lobby, I remember, about four weeks ago at 175 Fifth Avenue where I had business with my factors, the Majestic Factors Corporation, who have an office at the same building, and in the lobby I met him and I said to him then—I do remember I says, "I know more about this"—I don't want to use the expression—I said, "I know more about this case than 2180 anybody else."

Q. Your sister was married to Paul Hymowitz? A. At that time. Since then she has an annulment.

Q. Because he was placed in jail? A. Correct.

Q. Your sister had a legitimate claim against the assets of that estate, didn't she? A. Absolutely.

Q. How much? A. $500, which he had gotten only four weeks before the liquidation, before he went to jail, I mean.

Q. And he had put that into the business? A. No, he didn't put that into the business. From what afterwards we found out, he did not. He took out a lot of money from the business. 2181

Q. Was he— A. Just a minute. I will answer that question. He went to defend himself on that charge of relief tickets and it cost him over $1000 which he gave to politicians and lawyers to fix the case, but the result was he went to jail. The business was solvent.

Q. Hoffman wasn't his attorney for that particular case, was he, when he went to jail? A. No, no.

Q. Who told you that? A. About the politicians.

Q. Yes, and the lawyers. A. My family knows about that. My family and his family knew it. We knew what caused his conviction. If the family don't know, who is going to know it?

2182 Q. You say you spoke to Mr. Kandell? A. I did, about four or five weeks ago, is the first time I heard about it—I knew about the case but I never came in contact with him.

Q. You never spoke with anybody about the case? A. That is correct.

Q. Until you spoke with Kandell about for or five weeks ago? A. That is correct.

Q. And at that time you gave him a statement? A. And I gave him a statement two or three days following that conversation. He says to me, "You have got to help me out of this matter."

2183 Q. What else did he say? A. He said, "Will you come up to my office?" And I asked him, "who is your lawyer?" And he says—I don't remember who he said. And he said, "Will you give me a statement?"

Q. You don't remember the lawyer? A. Yes, I do remember.

Q. What is his name? A. George Mintzer.

Q. Yes? A. And he said, "Will you give me a statement?" And I says, "Of course I will. I will do that for you."

Q. How much did he offer you for it? A. Me?

2184 Q. Yes. A. I volunteered my services. I know the man for 20 years.

Q. You know Kandell? A. For 20 years, since he worked for the Shirt-Craft Company, 20 years ago, as credit man there.

Q. Do you know Martin Goldman? A. Never met him.

Q. Theodore Goldman? A. Never saw him.

Q. Or Schulman? A. Don't know him.

Q. But you have known Kandell? A. 20 years I knew him.

Q. Were you ever arrested or convicted of a crime?

2185

Mr. Corbin: I object.
Mr. Walsh: I think that is proper.
The Court: I will overrule the objection.

Q. Have you ever been convicted of a crime? A. I have.
Q. What crime? A. Petty larceny.

Mr. Walsh: That is all.

Redirect examination by Mr. Corbin:

Q. When was that? A. In 1914, 26 years ago.

2186

Mr. Corbin: That is all.

Recross examination by Mr. Walsh:

Q. And you say that Kandell did not offer to pay you money? A. No, sir.

Q. To make this affidavit? A. I wouldn't take it under no circumstance. He didn't offer me, and I didn't take it.

Mr. Walsh: No further questions.
Mr. Corbin: That is all.
The Court: Stand aside.
(Witness excused.)

2187

HARRY LEVY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Levy, do you remember a man by the name of Paul Hymowitz? A. I do.

Q. By the way, what is your occupation? A. I am in the wholesale shoe line.

Q. And have been for how long? A. Well, I have been in this line for the past 20 or 25 years.

2188 Q. Located where? A. 122 West Broadway.

Q. Did you sell to Hymowitz? A. I did.

Q. And did a time come in March, 1937, when you noticed something in respect to his store? A. Well, I called on Mr. Hymowitz during the month of March, 1937, and I found his place closed and my account was pretty long past due, and it looked kind of suspicious to me a man to be closed during business hours. So I decided to turn my account over to collect.

Q. What was the amount of it? A. $260.

Q. What is that? A. $260.

Q. And did you go to some lawyer? A. Why, I called
2189 up Teddy Goldman and I told him that I want to give him this here account for collection and until I got back to my office he should investigate and find out why the store is closed during business hours.

Mr. Schachner: Will you please speak louder so that we can hear you?

Will you read what he said?

(Answer read.)

Q. Who was Teddy Goldman? A. Of Goldman, Malter & Goldman.

2190 Q. Had they acted for you? A. As my attorneys.

Q. For how long? A. They had been doing my work for the past seven years.

Q. Did Teddy Goldman, a member of the firm that you knew as Teddy Goldman, attend to your matters? A. Teddy Goldman was always taking care of my accounts.

Q. So you called him and talked to him, and what did you say to him? A. I told him that "Here's an account," that his place of business is closed and the account is long past due and I can't imagine what is wrong, he should find out if there's anything wrong.

Q. And then you went back to your office? A. No, I

called him back later in the afternoon because it was on 2191
my mind and he told me that he made an assignment to his attorney, that is, to Paul Hymowitz's attorney, and of course I didn't like the idea of him making the assignment direct to his own attorney.

Q. Did you tell Teddy Goldman it? A. I told Teddy Goldman why didn't he go over to his creditors, let him arrange a meeting if he is in difficulties, why doesn't he take it up with his creditors direct instead of going to his attorney. I said, "I don't know his attorney."

Q. And you hadn't had any notice prior to that time of any proposed assignment, had you? A. Not at the time when I gave him my account; after that, I did. 2192

Q. That is, when you called and saw the store closed that day—

Mr. Walsh: Now I object to these leading questions, if your Honor please.

The Court: Yes. I will sustain the objection.

Mr. Corbin: May I at least finish the question?

Mr. Walsh: No, I object to it because it is putting words in the witness's mouth.

The Court: I think you asked enough to determine that it is leading, Mr. Corbin.

Mr. Corbin: I have got to ask it in that form. 2193
Let me ask you, see if it is wrong, if there is anything wrong about it.

Mr. Walsh: Then the damage is done; you are telling him the answer.

Mr. Corbin: Oh, "damage," like the boy—

The Court: Very well. Proceed with your question.

Q. What I was going to ask you is this: When you called at that store and found it closed that morning, as you have testified to here, is that the first time that you

2194 heard or knew or saw anything which was different about that account? A. When I called on the store I found the store was closed. That was the first time that gave me a suspicion that there was something wrong, that the man's business was closed during business hours.

Q. After you spoke, as you say, to Teddy Goldman the second time on the phone about a creditors' meeting, a meeting of the creditors, what next did you hear? A. Well, I was told later on that on that a meeting of creditors was held.

Q. Who told you that? A. Teddy Goldman.

2195 Q. And tell us what he said to you. A. He told me a meeting of creditors was held and creditors asked—that is, Hymowitz's attorney, to turn over everything direct to the creditors and they would in turn try to dispose of everything—of the stock, and distribute whatever they realized from the stock for the creditors.

Q. And— A. (Continued) And as I understand, that he, Mr. Hymowitz's attorney, consented of doing it.

Q. Then what was the next you heard? A. Later on I heard that Hymowitz's attorney changed his mind. He refused to turn it over.

Q. And what next did you hear? A. After he changed

2196 his mind, why, they were talking about filing a petition in bankruptcy.

Q. Well, did Theodore Goldman call you one day about that? A. Why, Theodore Goldman called me and he told me that several of his—several of Paul Hymowitz's creditors "are filing a petition in bankruptcy, and the attorney that represents some of those creditors that are filing the petition" got in touch with him and they asked him if I want to join with him.

Q. What did you say? A. Well, I was one of the petitioners.

Q. And you did sign the petition? A. Yes.

Q. And after that what next did you hear? A. After 2197
the petition was signed, later on I heard that they were going to put the petition aside, that Paul Hymowitz's attorney finally decided to do what the creditors want him to do, and the creditors had a cash buyer to buy the stock and pay the creditors as much as 40 per cent, which I was willing to accept 40 per cent in full payment of my account.

Q. And you told— A. And I told it to Mr. Teddy Goldman.

Q. Well, what next did you hear? A. Later on I was told that a 40 per cent settlement could not go through. One of the creditors—I think it was Endicott-Johnson— 2198
refused to accept settlement and finally it had to go through the regular assignment proceedings on account of him refusing to accept a settlement.

Q. That's the way you understood it? A. That's the way I understood it.

Q. Did you get your 17 per cent on your claim? A. Well, I don't know how much—how much it worked out on percentage. I received some $43 and odd change about a year later.

Q. Did you get or did anyone promise you any money for anything? A. No, sir.

Q. For signing the petition in bankruptcy? A. No, sir. 2199

Q. You got nothing extra? A. No, sir.

Q. Nothing more than the regular— A. $43 and change.

Mr. Corbin: Your witness.

Cross examination by Mr. Walsh:

Q. You didn't get much out of the bankruptcy, did you? A. I did not.

Q. How much? A. That is all I got, $43 and some change.

2200 Q. And you refused to take it, didn't you? A. I didn't refuse to take it.

Mr. Corbin: You mean out of the assignment, not out of the bankruptcy, Mr. Walsh.

He got an answer "Yes" from the witness on the proposition that he got something out of bankruptcy.

The Court: I imagine that the witness meant that he got it out of the assignment.

Mr. Walsh: Whatever you want to call it.

The Court: From the assignment proceeding.

The Witness: I got it from the assignment pro-

2201 ceeding.

Q. You said it was in the latter part of March, 1937, that you happened to be down in the Bowery, is that right? A. Yes.

Q. Do you remember the date? A. I wouldn't remember the date.

Q. Well, at any event, you called up Teddy Goldman and said that the store was closed? A. I did.

Q. And then you said, "Call me back at my office and find out." Is that correct? A. No. I called him back later in the day.

2202 Q. And what did he tell you? A. He told me that there was an assignment made to his lawyer.

Q. And did he also tell you that he had attended a meeting of creditors on that same occasion? A. Not at that time.

Q. How long after did he call you up and tell you that he had attended a meeting of creditors? A. I wouldn't remember the dates.

Q. Well, how many more days had elapsed after you first called him up? A. I—I was always in constant touch about this case, but I really couldn't remember dates, if

it's a week or two; I wouldn't remember, I wouldn't remember it. 2203

Q. What is— A. I used to call up Mr. Goldman occasionally and I used to call at his office occasionally, but I couldn't keep a record every time I called him or called to see him.

Q. Well, Mr. Corbin asked you—well, what was the conversation you had with Teddy Goldman? A. When?

Q. When he told you that he had attended the meeting of creditors. A. Well, there was more than one meeting, that I presume.

Q. Who told you there was more than one meeting? A. Well, it was going one way and the other. 2204

Mr. Walsh: What is that answer?

(Answer read.)

Q. What was? A. Well, first he was supposed to—

Q. Who was? A. Mr. Hymowitz's attorney.

Q. Who told you that? A. Teddy Goldman told me. First of all there was a meeting. I don't remember when the meeting was and when the meeting took place. I haven't attended to any of the meetings.

Q. You never attended any meetings? A. No.

Q. When Teddy Goldman called you up the first time he told you that an assignment for the benefit of creditors had been filed? A. When I called up Teddy Goldman that same day, later in the afternoon, he told me that an assignment to Paul Hymowitz's attorney was made. 2205

Q. Well, it has been testified that the assignment was filed on March 24, 1937. Would that refresh your recollection, Mr. Levy. A. I wouldn't remember the date.

Q. Well— A. All I do remember—

Q. How long after—

Mr. Corbin: Let him finish.

2206 Mr. Walsh: Well, he said he didn't remember.

Q. I don't want to cut you off if you care to continue. Did you have anything to say? A. No.

Q. All right. How long after Teddy Goldman told you that the assignment for the benefit of creditors had been filed did he next tell you about the meeting of creditors? A. I wouldn't remember the date. I can't remember the date.

Q. Was it the next day? A. It wasn't the next day; no.

Q. Well, was it two days after? A. No, it was much
2207 longer than that.

Q. Approximately how long? A. I couldn't say.

Q. You finally did sign a petition in bankruptcy? A. I did.

Q. And where did you sign that petition? A. In Mr. Goldman's office, Teddy's office.

Q. Teddy's office? A. Yes.

Q. And how did you happen to go up to Teddy's office that day to sign the petition in bankruptcy? A. Why, he called me up, that he wants to see me in reference to that matter and he understood—

Q. And is that the day you signed the petition? A. Why,
2208 he told me that they are supposed to sign a petition in bankruptcy and one certain attorney called him up that he would prepare for me—whether I signed it the same day or the next day, I don't remember.

Q. Did he mention the attorney's name? A. I wouldn't remember his name.

Q. Did he tell you that the attorney said that he had a couple of creditors and they were going to put Hymowitz into bankruptcy and he said, "We need you because you have a claim of $260; come on down. We will throw them into bankruptcy." Is that what he told you? A. No.

Q. What did he tell you? A. He told me that an at- 2209
torney representing several of Hymowitz's—

Q. Creditors? A. —Creditors—

Q. Yes? A. —has called him up and told him that they are filing a petition in bankruptcy in this matter and whether I would join with them, and I did.

Q. Yes. Whom did you go down with—or did you go down with anybody the day that you signed the petition? A. I don't get you. Come down where?

Q. To Teddy Goldman's office. A. I went there alone.

Q. You went down alone? A. Yes, sir.

Q. And you signed it at that time? A. I couldn't re- 2210
member the day. I signed it when he called me up or whether I signed it the next day, I don't remember.

Q. Did he tell you the attorney told him that he was going to file a petition in bankruptcy? A. I don't remember his name. I don't know if he told me his name or not. I don't remember names.

Q. Well, you had confidence in Teddy Goldman at that time, didn't you? A. Yes. He did my work for a number of years.

Q. Did you ever know that the petition in bankruptcy was later dismissed? A. I was told about it, yes.

Q. When? A. I couldn't remember the dates. It would 2211
be impossible for me.

Q. Was it around the time that you got your dividend from this Hymowitz estate? A. Oh, it was sooner than that.

Q. Well, how much sooner? Was it a month before? A. No, not sooner than that.

Q. What is that? A. Not sooner than that.

Q. Was it two months? A. I couldn't say.

Q. Can you give me any date at all? A. I haven't—I haven't taken any interest in the case.

Q. Well, who told you that the petition in bankruptcy

2212 had been dismissed? A. I wasn't told that it was dismissed. I was told that it was going to be put aside.

Q. It was going to be put aside? A. Yes.

Q. Do you remember when? A. I can't remember.

Q. Well, reading from Government's Exhibit 15 in evidence, do you remember receiving a letter from Mr. Kandell or Mr. Schulman to the effect:

"Please take notice that the undersigned will purchase from Paul Hymowitz all the merchandise consisting of Army and Navy goods now contained in their store" and it is signed by "A. Rothlein."

2213 Do you remember that, receiving that notice?

A. I remember of receiving different kinds of notices and I turned it over to Theodore Goldman.

Q. Well, I mean— A. All correspondence concerning this case.

Q. I would like to know when you first heard when the petition in bankruptcy was dismissed. Can you help me at all? A. I cannot—I cannot remember the dates because I let Mr. Goldman handle it for me and I didn't take any active part in it.

Q. And you had confidence in Mr. Goldman to protect
2214 your interests, is that right? A. Well, he was my attorney in this case.

Q. You don't know the attorney—oh, did you subsequently come down to the court? A. What court?

Q. This court. On April the 5th. A. Well, I was—on April the 5th?

Q. Yes, before Judge Coxe? A. No, no.

Q. You did not come? A. No.

Mr. Walsh. That is all.

2215

Redirect examination by Mr. Corbin:

Q. You still have confidence in Teddy Goldman, haven't you? A. Well, I have no reason not to.

Mr. Corbin: That is all.

The Court: Stand aside.

(Witness excused.)

The Court: Who is next?

Mr. Fielding: Mr. Schwartz.

Is Mr. Schwartz in court?

(No response.) 2216

Mr. Fielding: I understood, your Honor, he would be here this morning.

The Court: Very well. Do you have anything else this morning?

Mr. Fielding: That was the only other witness I had at this time.

The Court: Any of the other defendants have any other witnesses?

Mr. Corbin: I will call Theodore Goldman.

The Court: Very well.

THEODORE GOLDMAN, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, testified as follows: 2217

Direct examination by Mr. Corbin:

Q. Are you the one that has been referred to here on this trial as Teddy Goldman? A. Yes, sir.

Q. That is your nickname? A. That's right.

Q. And how long have you been a practicing attorney? A. I was admitted in June of 1928.

Q. And you have been in the office with your brother Martin Goldman ever since? A. No. Prior to that time I was associated with another attorney in Brooklyn.

2218 Q. By the way, you live in Brooklyn, don't you? A. That's right.

Q. How long have you been associated with your brother in practice? A. I think since 1930.

Q. And you and your brother both have been located at what address in Manhattan? A. 302 Broadway for the past six years, and prior to that at 225 Broadway.

Q. You are not married, are you? A. No, sir.

Q. And Mr. Malter is a member of the firm, is he? A. Yes, sir.

Q. What is his full name? A. Harry Malter.

Q. And the firm name is Goldman, Malter & Goldman?

2219 A. Yes, sir.

Q. And in 1937 it was that same title? A. That's right.

Q. The same members? A. That's right.

Q. You and your brother and Mr. Malter? A. Yes, sir.

Q. What was the basis of it? A. The basis of the partnership was on a division whereby Harry Malter and Martin Goldman would each receive 40 per cent of the net earnings and I would receive 20 per cent.

Q. You have known this Harry Levy, the last witness here? A. I have.

2220 Q. And have you acted as his lawyer on occasion prior to 1937? A. That's right.

Q. What do you recall of your first contact of any kind with the Hymowitz matter? A. On or about March 24, 1937.

Q. What happened? A. I received a telephone call from Harry Levy who had informed me that the store of Paul Hymowitz was closed and that Paul Hymowitz was indebted to him in the sum of approximately $260, and asked me to handle the collection of the claim for him and to find out the circumstances under which the store was closed.

Q. Now is that the first time that you ever heard anything about Hymowitz or 346 Bowery or anything of that? A. That is the first time that I ever heard anything about it. 2221

Q. All right. What did you do? A. I had one of the law clerks go over to the County Clerk's office, and the federal court, to find out whether there was any court proceeding pending in the matter of Paul Hymowitz.

Q. You say "one of the law clerks." Let me interrupt to ask you what sort of a staff you had: how large an office, how many stenographers and so forth. A. Well, we had I think at that time a managing clerk or attorney; I think we had approximately three or four clerks, and four stenographers, and the members of the firm. 2222

Q. You found through the inquiry that you made through the young man in your office that the assignment had been filed? A. That's right.

Q. And without delaying, that is the assignment that is in evidence here? A. Yes, sir.

Q. What next did you do? A. I telephoned Robert Hoffman, the attorney for the assignee.

Q. How did your know he was the attorney for the assignee? A. One of the law clerks had brought back the information that Samuel S. Kolman was the assignee and that Robert Hoffman was the attorney for the assignee. 2223

Q. Did you reach Hoffman on the phone? A. I did.

Q. What is the substance of your talk with him? A. I told Mr. Hoffman about the fact that our firm represented Harry Levy, a creditor, and asked him the facts in connection with the making of the general assignment for the benefit of creditors, and he related the facts.

Q. What did he say in substance? A. He told me that Paul Hymowitz had been convicted and sentenced several days prior thereto in connection with some crime committed against the City of New York with regard to relief tickets,

2224 and told me that what the assets and liabilities were; as I recall them, he told me at that time that he owed approximately $2500 and that the assets at cost were approximated between twenty-two and twenty-five hundred dollars, and that there were some moneys due from the City in connection with the relief tickets, amounting to between $250 and—there was $250 and $200—$450. He told me at that time that he was preparing a letter which he was sending to creditors setting forth substantially the facts that he told me over the phone.

Q. Did you make any suggestion to him? A. I did. I told him that our client suggested that a meeting of credi-
2225 tors be called for the purpose of having Hoffman advise the creditors the facts and circumstances in connection with the making of the assignment and to discuss the handling of the Paul Hymowitz matter, and he was agreeable.

Q. That is, you suggested that he call a meeting and send that out with the letter and he did that? A. That is right. He told me—

Q. That is the letter in evidence here, of the notice of a meeting? A. Yes, sir.

Q. All right. Meanwhile you had talked with your client on the phone and told him about the assignment, had you?
2226 A. That's right.

Q. And what had Levy said to you when you told him that there was a lawyer? A. Well, he was very much disturbed about the fact—

Q. What did he say? A. He said to me—he asked me whether I knew Robert Hoffman and I told him that I did and I told him that in all likelihood Kolman, the assignee, and Hoffman, the attorney, were designated by Hymowitz and he said that he thought creditors should control and supervise the administration of the estate and thought that some arrangement ought to be made in connection with that.

Q. Now he didn't use any such language as that, did he? A. No, sir. 2227

Q. You are giving us the substance? A. That's right.

Q. And after you talked with Hoffman, that you have given us, the next day you went up to see Hoffman? A. No. I think the night before, either at the time, I called Hoffman or shortly prior thereto, I had received a telephone call from Mr. Kandell of the Dry Goods and Furnishings Association in which he inquired from me as to whether I knew anything about the Paul Hymowitz matter, and I told him that I had received a call from one of our clients, that I had found out from investigation that Paul Hymowitz had made an assignment. He told me that one of 2228
their clients or members of their Assocaition had made an inquiry and that they were representing Butler Bros., and I think it was at that time that I had called Hoffman and I think I—and that's how I came to arrange for the meeting of creditors to be held at the Dry Goods and Furnishings Association.

Q. All right. Well, while I think of it let me ask you, did you or did anyone connected with your firm, so far as you know, at any time say or claim that you or your firm represented Butler Bros.? A. No, sir.

Q. All right. You and Mr. Kandell went over to see 2229
Hoffman the next day, isn't that right? A. That's right.

Q. And will you tell us briefly, in substance, what your talk was so that we get along? A. I told Hoffman about the conversation that I had with Harry Levy in which Harry Levy expressed the desire to have creditors handle or supervise the administration of the estate or be in control, and—

Q. What he probably said—"I have got a creditor who doesn't want"—

Mr. Walsh: I object to what he probably said. What did he say?

2230 The Court: I sustain the objection.

Q. When you are giving us these words, are you assuming to quote the words used by your client?

Mr. Walsh: I object to that, what he is assuming, and what he isn't assuming. Let him tell the conversation.

The Court: I sustain the objection.

Q. Go ahead. A. Well, I am relating in substance as far as I can recollect what the conversation was. I don't remember the exact words.

2231 Q. Go ahead. Tell us what it was. A. I told him about the fact that Harry Levy said he was opposed to Hoffman, the attorney for Hymowitz. Kolman who was designated by Hymowitz in supervising and administering the estate, and that there ought to be creditor supervision and control. Mr. Hymowitz—Hoffman then told me that there was no necessity at that point for making any decision, that the matter would be discussed at the creditors' meeting in the afternoon of that day. He said that as far as he was concerned he was satisfied to have creditor supervision and control.

Q. Did you at that time say that you were going to file
2232 a petition in bankruptcy or anything to that effect? A. No, sir.

Q. Did Kandell? A. No, sir.

Q. Mr. Kandell was there all the time you were there? A. That's right.

Q. And after you talked with Hoffman the day before on the phone, had you prepared a stipulation or consent that there be a co-assignee and a co-attorney for the estate? A. I prepared that on the morning of March 25.

Q. It was after your prior talk with Hoffman? A. Yes.

Q. And before you went up there you took that up with you? A. That's right.

Q. And did he sign it there at that time? A. He did 2233
not.

Q. And then you left that paper with him, is that correct? A. He asked me to leave it with him.

Q. Well, you did leave it? A. I did.

Q. Did you attend the creditors' meeting that afternoon? A. I did not.

Q. What was the next you had anything to do with the matter? A. I don't think I had anything further to do with it until on or about—oh, I think it may have been about four or five days after the meeting of creditors. I received a telephone call, I think, from Phil Cohen of the Dry Goods & Furnishings Association in which he ad- 2234
vised me that he had been receiving telephone calls from several of the creditors and the representatives or buyers that they had sent to the store, who had called him and told him the store was closed, and whereas the arrangements that had been made with Hoffman was to have the store open between certain hours of that day, and he asked me to communicate with Mr. Hoffman, find out why the store was closed, and arrange to have it opened. I telephoned Mr. Hoffman and he told me that he had made arrangements with Mr. Kolman to have the store opened on that day and that in all likelihood Hoffman—Kolman 2235
was delayed in arriving at the store at the time when the first appointment was made, and that he would see to it that the store was opened as quickly as possible.

I think I called back Mr. Cohen and communicated that fact, and I think later in the day I had been told by Mr. Cohen, or Hoffman called me back and said he heard that Kolman was there and that the store was opened.

Q. All right. What was the next thing of importance? A. Well, the next thing that I heard in connection with the matter is I had received a telephone call from Mr. Schulman on or about April 2nd, 1937, in which he told that

2236 several of his creditors had consulted him in connection with the Hymowitz matter and these creditors had sent prospective buyers to look at the stock, and that they tried to communicate with Mr. Hoffman and that Schulman had tried to get Mr. Hoffman but they couldn't reach him. They had called him and left the phone numbers and they couldn't get in touch with him and his creditors were dissatisfied with the fact that Hoffman wasn't following out the arrangement that he had originally made at the first creditors' meeting, and that he said his clients wanted to file a petition in bankruptcy and asked whether our client, Harry Levy, would join with him.

2237 He asked me how our client felt about it and I said I didn't know, I would call Harry Levy and find out, and I thereafter—I think that day before I called Levy, I think I called Hoffman. I think Schulman asked me to or I called him myself and tried to reach Hoffman for the purpose of finding out what the reason for this delay in arranging this further conference and carrying out the creditors' wishes, and I couldn't reach him. I had left a message and he didn't call back.

I then called Harry Levy and told him about the conversation I had with Schulman and he said that he was satisfied to join with these other creditors.

2238 Q. Well, he did sign it up; the petition was prepared over in your office and it was signed by—

Mr. Walsh: I object to this leading, if your Honor please.

The Court: Well, I will overrule the objection.

Mr. Walsh: I think this—

Mr. Corbin: What is that?

Mr. Walsh: I wish you wouldn't lead him.

The Court: Very well. I will sustain the objection, and don't lead him.

Mr. Corbin: It is all right with me.

The Court: I will sustain the objection. 2239

Q. What was the conversation that you had with Schulman? Give it to us in detail.

Mr. Walsh: We are past that.

A. Thereafter, after talking to Harry Levy I called Schulman back and told him that our client Harry Levy was satisfied and willing to join in the petition in bankruptcy. Schulman then gave me the names of his creditors, or the other petitioning creditors, gave me the names of the partners—the partnership name—gave me the amount of their claims and I prepared the petition in our office. I 2240
also prepared—dictated the petition and order for the stay staying the assignee from proceeding with the sale.

Mr. Corbin: May I have the petition now?

Mr. Walsh: Government's Exhibit 3 (handing to Mr. Corbin).

Q. Is this the original petition that was prepared or one of the originals (handing to witness)? A. This is a duplicate original of the petition that was prepared.

Q. Now, this information contained in the paper the names of the petitioners, the individual members of the firm and the amount of their claims in each instance—that 2241
is the data that Schulman gave to you on the telephone? A. Yes.

Q. How did it happen that you prepared it instead of he? A. Why, Schulman asked me to. He knew that we had four stenographers in our office and it was a Saturday morning—

Q. How big an outfit did Schulman run? A. He was a single practitioner; had one girl.

Q. And this petition was signed over in your office too, wasn't it? A. Yes, sir.

2242. Q. I notice that Schulman's name is on it as attorney for the petitioning creditors. Did you undertake with him about that, whether he would appear or you would appear as attorneys of record? A. Well, originally our firm name was on the petition. I thought that we were going to be the attorneys for petitioning creditors, and when he came over to the office to sign it he felt that he ought to be the attorney for the petitioning creditors because he represented three—two or three out of the total number of creditors, whereas we only represented one of the petitioning creditors, and so the stenographer erased our name and he asked her to insert his name and address on the petition.

2243 Q. And that was agreeable to you, wasn't it? A. Yes.

Mr. Corbin: I will show this to the jury, you can see where the name was erased from there (indicating). You can take it if you wish (handing to forelady).

Mr. Walsh: If your Honor pleases, I did not hear about the last three sentences that Mr. Corbin has said—if he will stand back—will you read what he said?

(Record read.)

Mr. Walsh: "The name was erased"? That is the
2244 name of Goldman, Malter & Goldman, is that right?

Mr. Corbin: You got that straight; sure.

Q. Find me the petition that you prepared at the same time, the petition to stay the sale. A. (Handing paper to Mr. Corbin.)

Q. Is this it? A. Yes, sir.

Q. This is dated April 3rd, verified by Mr. Schulman as attorney in fact. His name is on it as attorney for the petitioning creditors.

Did you also prepare this petition and this proposed order for Judge Coxe to sign restraining the sale? A. I did.

Q. Mention has been made during the course of the trial 2245
that the petition in bankruptcy did not mention the fact that there had been an assignment for the benefit of creditors. Did you notice that that is the fact, that that part of it isn't filled in? A. Yes, I know it isn't.

Q. This is all on a printed form, isn't it? A. That's right.

Q. Did you have any discussion with Schulman for any purpose at the time to omit that filling in of that printed form in that paragraph? A. No, sir.

Q. As a matter of fact the petition that you dictated and prepared on the same day referred to the assignment, didn't it? A. May I see it? 2246

Q. Expressly (handing to witness). A. Yes, it did.

Q. You weren't trying to keep from the Court the fact that there was an assignment for the benefit of creditors that had been executed in this case, were you? A. I was not.

Mr. Corbin: I will read from this petition, Judge. (To the jury) After the first two paragraphs, the third paragraph is that "on the 24th day of March, 1937, the alleged bankrupt executed a general assignment for the benefit of creditors and notice of sale was sent out in the assignment proceeding that the assets would be sold at auction sale on April 5th, 1937 at 2247
10:30 a. m."

And then the fourth: "After the filing of the assignment for the benefit of creditors a meeting of creditors was held at the Dry Goods & Furnishing Association at which time creditors expressed their dissatisfaction with the liquidation of the estate in the assignment proceeding and suggested that the assets of the alleged bankrupt be inspected for the purpose of determining the value based upon which the debtor or the alleged bankrupt was to offer a

2248 settlement. Subsequently thereto, the premises were opened for inspection and the assets were inspected by the various prospective buyers.

"5. The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon a liquidation of the assets in the assignment proceeding.

"6. In view of the fact that the creditors are opposed to the liquidation of the estate in the assignment proceeding your petitioner desires to have the annexed order signed in order to stay the assignee from proceeding with sale under the assignment pro-
2249 ceeding so that in the event that no settlement is made that an application for the appointment of a receiver in bankruptcy may be applied for the assets sold under the supervision of this Court."

Q. Now that was your dictation and you dictated it in the knowledge that it was to be presented to this federal court here? A. Yes, sir.

Q. Did that fairly state the facts insofar as the petition reflects them, as you understood them to be at the time? A. It did.

Q. Do you recall whether you dictated—well, you did not
2250 dictate the petition in bankruptcy because it is a printed form filled in? A. No. That's a printed form that we use.

Q. Yes, and how did you prepare this printed form of the petition in bankruptcy? A. Well, I first dictated the petition and order for the stay.

Q. Right; that's all. A. And then I gave the girl, the stenographer, the names of the creditors, the amounts of their claims, the name of the person who was going to sign the petition; gave her the—

Q. That was the stuff that you had gotten over the telephone from Schulman? A. Yes.

Q. That data? A. Yes.

Q. And she filled out the form? A. And she filled out 2251
the form herself.

Mr. Walsh: I think he ought to say what else he told the stenographer, rather than fill it out in blank.

The Court: Very well. You can take that up on cross-examination. I believe we will recess until 2:15.

(Recess until 2:15 p. m.)

AFTERNOON SESSION.

THEODORE GOLDMAN, resumed the stand.

2252

Direct examination continued by Mr. Corbin:

Q. Still referring to these two papers and the petition in bankruptcy, and the petition to stay the sale, in addition to these two papers that you prepared thereafter and during the ensuing weeks, you drafted another—

Mr. Walsh: I object to leading the witness, if your Honor please.

The Court: Objection sustained.

Mr. Corbin: Let me finish the question, please, your Honor.

The Court: You have gone far enough, Mr. Corbin, 2253
to demonstrate it is a leading question.

Q. After you prepared these two papers and during the ensuing weeks, did you or did you not prepare other papers? A. I did.

Q. Of various types? A. Yes, sir.

Q. Did you ever have any doubt that you had prepared this petition for the purpose of staying the sale, the one that you dictated? A. I did.

Q. You never had any doubt that you prepared that, did you? A. May I see it, please?

2254 Q. The petition and order staying the sale? A. Yes, sir, I prepared this (indicating).

Q. Now so far as this printed form, the one that you testified about this morning and gave to the stenographer, which is endorsed "Involuntary petition in bankruptcy"—as to that one was there a time when you did have some doubt in your mind as to whether you had prepared it or not? A. There was.

Q. And do you remember an occasion when there was a hearing before a referee as to whether your firm was entitled to—

2255 Mr. Walsh: I object to all this as leading. I think the witness is competent to testify himself.

The Court: I will overrule the objection to that question. That is preliminary.

Mr. Walsh: He is going to tell him what he testified to at that hearing. That is what I object to.

Mr. Corbin: I move to strike out the remarks of Mr. Walsh.

The Court: I will sustain the motion to exclude the remarks.

2256 Q. (continued) share in the $300, that Hoffman got? A. Yes, sir.

Q. And you were a witness at that time? A. I was.

Q. And were you asked, among other things, whether you prepared this involuntary proceeding in bankruptcy, the printed form? A. Yes, sir, I was.

Q. What did you say then? A. I said I did not.

Q. Then at some later time you were a witness before a grand jury in this case? A. I was.

Q. And did you then state, in words or effect, that you did not prepare this petition? A. I did.

Q. On those occasions were you intentionally—

Mr. Walsh: I object to that, if your Honor please. 2257
That calls for a conclusion.
The Court: Yes. Objection sustained.

Q. On those occasions when you so testified did you believe that you had not prepared it?

Mr. Walsh: I object to that also, your Honor.
The Court: I will overrule the objection.

Q. (Read.) A. That is right.

Q. And when was it that you recall the fact that you did, as you testified here, prepare— 2258

Mr. Walsh: I object to all this, your Honor.
The Court: I will overrule the objection.
(Question read.)

Q. This involuntary petition? A. I think it was at a conference at your office, a conference of the attorneys in connection with the preparation of the case for trial.

Q. Well, it was within a month or two? A. Recently, within the past month or so.

Q. And on that occasion the duplicate original of this involuntary petition was present at the conference, wasn't it? A. Yes, sir. 2259

Q. And do you recall that we then noticed that the name "Schulman" had been written in over and your firm name, to be stricken out?

Mr. Walsh: I object to that, your Honor?
The Court: Objection sustained.

Q. What caused you to recall it? A. At that time Schulman exhibited at the conference the duplicate original of the involuntary petition in bankruptcy, and at that time Schulman called it to my attention, that the body of it had

2260 been prepared in our office, and that it had the firm name of Goldman, Malter & Goldman on the body and that it had been erased and the name "Schulman" had been typewritten in.

Q. And was it then that your recollection was refreshed? A. That is right.

The Court: Let me see those exhibits.

(Exhibits handed to the Court.)

Q. After this interval of the preparation of the petition in bankruptcy to stay the sale—you had to do with the preparation, I think you said, of other papers? A. Yes, 2261 sir.

Q. Did you have any further conference after that with Hoffman? A. I did not.

Q. Do you recall a conference at your office at which Hoffman was present and there were others, including Mr. Scott, who testified this morning? A. Yes, sir, that is right, at my office.

Q. When was that? A. May 28, 1937.

Q. Will you tell us who was present? A. Robert Hoffman, Samuel Kolman, Severin Scott, Gabriel Wishbow, Edward Lipkowitz and myself.

Q. Lipkowitz came in later but before the conference 2262 ended? A. Yes, sir.

Q. At that or any other time did you say to Mr. Hoffman or to any one in his presence or to any one out of Hoffman's presence that, in words or substance, you would get this man Severin Scott to take $25 or $50, that that would be his cut-in, to withdraw his application to remove the assignee? A. No, sir.

Q. The charge in this indictment is in substance that the defendants in this case would conspire and agree, among other things, to obtain a compromise from Hoffman, the attorney, to consent to a settlement of 40 per cent to

creditors and would join with the defendants in the sale of the assets at a price purporting to be $1500, whereas the true price would be $1900; the defendants and said Hoffman retaining and receiving a difference of $400 and thereby the bankruptcy proceedings would be dismissed; did you ever enter into any such agreement with anybody? A. I never did. 2263

Q. Did you ever conspire to enter into any agreement to sell this stock for $1900 and report the price to the creditors to be $1500? A. No, sir.

Q. Or to split $400 difference between 1500 and $1900? A. No, sir.

Q. Or to split $400 or any other sum, whether it be the difference between 1500 and 1900 or 12 and 16 or otherwise with anybody, for any illegal purpose? A. No, sir. 2264

Q. Was there any such understanding or agreement entered into by anyone so far as you know? A. None that I know of.

Q. Did you ever hear of any such thing? A. Never did.

Q. Until this indictment came down? A. That is right.

Q. The indictment was found this year, 1940? A. That is right.

Q. Did you in the course of your relationship with the Hymowitz matter, from the beginning to the end, ever hear anybody mention a price of $1900 that would be received for the assets, in whole or in part? A. I never did. 2265

Q. Did you ever hear of any purchaser making any offer, or any prospective purchaser making any bid of $1900 for that stock, in whole or in part? A. I did not.

Q. In that conference late in May of 1937 that I just referred to and that Mr. Hoffman testified about, he said that your brother Martin Goldman was going back and forth through the room; do you recall that? A. I have no such recollection.

Q. Well, the conference was held in your room, wasn't it? A. It was.

2266 Q. Is your room so located that anyone can pass through it back and forth? A. No, sir.

Q. And it was not so located at that time? A. It was not.

Q. Do you recall Martin Goldman being at that conference at all? A. I do not recall him being present.

Q. Did you hear Mr. Scott testify here this morning? A. I did.

Q. At that conference did he say to Hoffman in words or in substance, why, you represent Hymowitz practically—

Mr. Walsh: I object to that. If he wants to get this witness's recollection, why doesn't he ask him?

2267 Mr. Corbin: I am trying to get what happened.

The Court: I will overrule the objection. There are certain matters on which you are permitted to ask leading questions, practicularly about various matters.

Mr. Walsh: He didn't ask if Hoffman said that. That is why I objected to it.

The Court: I will overrule the objection, without stating the reason. There are two theories, one is that it is not leading, and I will follow that rule.

Q. At that conference did Hoffman say he represented Hymowitz? A. He did.

2268 Q. And what did he say with reference to letting the sale go through so far as Endicott-Johnson's application was concerned? A. Well, as I recall the conversation that took place at that time, Scott indicated and told Hoffman that he would not accept the 40 per cent settlement in full, the 40 per cent settlement that was contemplated being paid to the creditors, that his client, Endicott-Johnson, would not accept that amount of 40 per cent in full settlement of their claim. And Hoffman then said, "Unless we get a release from Endicott-Johnson"—he was opposed to the contemplated sale of the assets and the 40 per cent to the creditors.

Q. Scott at that conference didn't object to the sale going through? A. No. 2269

Q. It was Hoffman?

Mr. Walsh: I object to that

The Court: Objection sustained.

Q. What was it Hoffman said? A. Hoffman said unless Scott or the firm he represented, Endicott-Johnson, would accept the 40 per cent settlement in full and give a release, that Hoffman said he would not permit the sale of the assets.

Mr. Corbin: Your witness. 2270

Cross examination by Mr. Walsh:

Q. You didn't know Mr. Hoffman prior to March 24, 1937, did you? A. I did not.

Q. Did you know Mr. Kolman? A. I did not.

Q. That is the first time you ever met them, on or about March 24, 1937? A. No, I didn't meet Mr. Hoffman on the 24th of March.

Q. I beg your pardon. You called him up on that occasion? A. That is right.

Q. And when did you first find out about the assignment being filed? A. On March 24, 1937. 2271

Q. And how did you find it out? A. By one of our law clerks who made an examination of the court records and so informed me.

Q. Did you ever make an examination of the court records in the Supreme Court, so far as the assignment file is concerned? A. On March 24?

Q. At any time? A. Yes, sir, I made an examination thereafter.

Q. Can you tell me whether or not you can find out whether or not an assignment is filed and find out that it

2272 has been filed on that same day, in the Supreme Court? A. I never had occasion to do that.

Q. You know you cannot do it. You have to find out from the auctioneer or from the Law Journal next day? A. I think you are wrong with regard to that.

Q. Did you ever do it? A. I never had occasion to do it.

Q. Your law clerk did it? A. I know it is a public record and is filed in the County Clerk's office.

Q. Do you know the modus operandi of an assignment filed? A. I do.

Q. What is it? A. It is filed in the County Clerk's office,
2273 in the county.

Q. Let us take New York County. A. The original assignment would be in the County Clerk's office, in the Supreme Court Building.

Q. That is correct. Then what happens? Then is there a public record made as of that time? A. I know they have a docket book in which they record the filing of the assignment.

Q. Next day? A. I don't know that.

Q. You don't know that? A. No.

Q. The first time that you telephoned Hoffman, I believe you said that he told you that the assets or the liabilities
2274 were approximately $2500? A. $2200 to $2500, at cost.

Q. And how much did he tell you the liabilities were? A. Approximately $2500.

Q. And you also mentioned that there was something about relief tickets? A. That is right.

Q. On that basis that was a solvent estate, wasn't it? A. Based on the figures that he gave me?

Q. Yes. A. I don't know whether the figures were correct or not.

Q. Based on what he told you it was a solvent estate? A. Not so far as the liquidation of the assets.

Q. You don't liquidate a solvent estate, because this individual was in jail, but based on the figures he told you and what you have already testified to that the cost would be $2200 to $2500 and the relief tickets, that would be approximately 2600 to 2900; is that correct? A. That is right. 2275

Q. And the liabilities were $2500? A. That is right.

Q. So basing your thought on what he told you, that was a solvent estate? A. It was not, because I know that you cannot realize in liquidation—

Q. Well, regardless of whether or not you could realize a certain amount in liquidation, so far as you know, and from what he told you, it was a solvent estate, but at a forced liquidation, perhaps you could not get 40 cents on the dollar; that is correct, isn't it? A. No, sir. Mr. Hoffman had told me about the fact that the sale of the assets, an auction sale, had been arranged, that he obtained an order for the sale of the assets on April 5, 1937, and I knew that you could not realize at an auction sale the amount of the cost value of those assets, and based upon that figure I knew the estate was insolvent. 2276

Q. At a forced sale? A. He had told me he had arranged an auction sale of the assets.

Q. He also told you that the mother could not under any circumstances continue the business, and that was the reason he was throwing all the money over to his creditors so that when he did get out of jail, that the creditors from whom he had purchased goods in the past would be well disposed towards him and give him an opportunity? A. Never made such a statement. 2277

Q. Isn't that what is in Government's Exhibit 5-A, in the letter? A. I don't recall the exact words in the letter.

Q. That is the letter that was sent out to the creditors. Don't you remember that, Mr. Goldman? A. I remember the letter but I don't remember the contents.

2278 Q. The widowed mother of Paul Hymowitz made a futile attempt to conduct the business after her son, Paul, was convicted; do you remember that? A. Yes, sir, I remember that being in the letter.

Q. It was the wish of Paul Hymowitz that his business be liquidated so that the creditors should receive the greatest possible benefit and had entrusted Mr. Kolman with carrying out his wishes. Do you remember that part of the letter? A. Yes, sir.

Q. And thereafter the meeting was had with Mr. Hymowitz at Rikers Island and they signed this assignment, which was filed on the 24th. Does that refresh your recol-
2279 lection, that Mr. Hoffman told you all that, on that occasion? A. He may have told me. I don't recall the exact words you read. I knew about the assignment; I knew about the fact that Hymowitz had gone to jail.

Q. You suggested that a meeting of creditors be called, and it went out with the letter? A. That is right, but I had not seen that letter at the time. I had some conversation with Hoffman on March 24th.

Q. He told you about the assets at that time? A. He did.

Q. Mr. Hoffman didn't object when you suggested a
2280 meeting of creditors, did he? A. First he thought there was no necessity for it.

Q. Now we are talking of March 24th? A. Yes, sir, that is right.

Q. He finally said he would send out a notice to the creditors? A. After I requested him to do so.

Q. He didn't object? He sent it out, didn't he? A. That is right.

Q. Then on March 25th, if my memory serves me correctly, you went over together with Mr. Kandell to Mr. Hoffman's office? A. That is right.

Q. About what time? A. I think it was around 12 noon or between 12 and 12:30.

Q. And did you have a conversation with him at that time? A. I did. 2281

Q. And what was that conversation? A. He related the details in connection with Hymowitz going to jail. He told us more details about the criminal proceedings and also gave us more information in connection with the facts and circumstances relating to the assignment. He told me about the fact that although he did not represent Hymowitz in connection with the criminal proceedings, he was related, but indirectly, to Paul Hymowitz and had known the family for many years.

Q. Did he tell you about the assets on that day? A. I don't recall. We probably discussed it at that time. 2282

Q. Well, that was not a big estate, was it? A. I wouldn't consider it a big estate.

Q. And you had prepared, had you not, prior to your going over to Mr. Hoffman a retainer to retain your firm as co-attorneys? A. That is right.

Q. Is that correct? A. Yes, sir.

Q. Is that what you usually do when you represent a creditor? A. No, sir.

Q. Is that the first time you ever done that? A. I have no recollection of any other occasion at this time.

Q. Were you so sure that you would be retained that you brought the notice with you? A. I was not certain. 2283

Q. But you were prepared? A. Yes, sir.

Q. And Mr. Kandell was, of course, the assignee? A. Designated in the stipulation.

Q. As a matter of fact, you said you represented Levy on that occasion? A. I did.

Q. Who did Kandell represent? A. Butler Bros.

Q. Is it not a fact that Butler Bros. did not authorize Kandell to act until March 26th, the day after the meeting of creditors? A. I do not know anything about that.

Q. You won't deny that? A. I do know Kandell stated to Hoffman that he represented Butler Bros.

2284 Q. On that occasion, and so stated to you? A. On March 25, and I think he stated it to me on March 24, the night before.

Q. Well, he had represented Butler Bros. in other bankruptcies but had not been authorized to act in this one until March 26? A. I don't know. I have no knowledge of that fact.

Q. How did you happen to get in touch with Kandell before you went over there on March 25th? A. I think that I called Kandell or Kandell called me on the morning of the 25th and asked me about the books and records of Paul Hymowitz, whether he could see them before the
2285 meeting of the creditors. And I told him that I didn't know of any books and that in all likelihood Hoffman had the books and records at his office.

Q. And what did Mr. Hoffman tell you when you got over there concerning the books? A. He said there were no books, that all he had were loose bills, paid and unpaid.

Q. What was the conversation between you and Kandell when you dictated the retainer for co-attorney and co-assignee? A. I prepared—

Q. Which did you prepare first? A. I dictated both of them simultaneously.

Q. What was the conversation that led up to the dicta-
2286 tion of this co-attorney and co-assignee retainer simultaneously? A. I told Kandell that our client, Levy, had requested that there be creditors' supervision and control, that the clients wanted the assignee and attorney for the assignee selected by Hymowitz completely out of the case, felt it was a matter that the creditors should handle. I told Kandell that I contemplated going up to see Hoffman and discuss that phase of the matter with him, and I asked Kandell whether he would be willing to serve as co-assignee.

Q. Why? A. He represented a creditor, and he said

it was satisfactory, and I prepared the papers, in anti- 2287
cipation of discussing the matter with Mr. Hoffman.

Q. After you had this conversation with Mr. Hoffman, at which time Mr. Kandell was present, what did you do then after that? Did you do anything more that day? A. After we left Mr. Hoffman?

Q. Yes, so far as the Hymowitz matter was concerned. A. I did nothing further that day.

Q. That was the day of the meeting? A. That is right.

Q. What time was the meeting? A. I think 4 or 4:30 in the afternoon of that day.

Q. Did you have a conversation with your brother con- 2288
cerning your conversation with Mr. Hoffman? A. On the 25th?

Q. 24th or 25th of March. A. On the evening of the 24th of March, after I had arranged for the meeting of creditors at the Dry Goods Association I told my brother about the fact that I had arranged the meeting and that I could not be there because of some prior appointment that I had and asked him if he could arrange to be there, and he said he would.

Q. Is that all? A. That is all.

Q. Nothing else said? A. I told him that Hoffman had told me that his client, Paul Hymowitz, had gone to jail, 2289
the store was closed, and that the assets consisted of merchandise, inventory and fixtures which Hoffman said at cost were worth approximately between $2200 and $2500, and that there was some money due from the city in connection with relief tickets.

Q. Did you tell him how much? A. Yes, sir, I told him the figures were approximately $450, and that the approximate liabilities were $2500.

Q. What did he say? A. He said he would attend the meeting.

Q. Had you mentioned to Mr. Hoffman that unless you

2290 were appointed co-attorney, that perhaps there would be a petition in bankruptcy filed? A. I did not.

Q. You did not? A. No.

Q. You are sure of that? A. Positive.

Q. Is there anything else that you told your brother concerning it? A. That is all.

Q. Did you tell him anything about your thoughts about filing a petition in bankruptcy in the event that Hoffman wouldn't allow you to act as co-attorney? A. I did not.

Q. You did not. You never mentioned petition in bankruptcy at that conversation? A. No, sir.

2291 Q. And did your brother attend that meeting, if you know? A. He did.

Q. Did you ever have a conversation with him as to what happened at the meeting? A. Yes.

Q. And at that time did he tell you who was present at the meeting? A. No, sir.

Q. Did you know that Mr. Schwartz was present at the meeting? A. I did not.

Q. Did you see Mr. Kandell after the 25th, after the meeting? A. I did not.

Q. Did you see him at any time prior to April the 2nd, the day when Schulman testified he called you up?

2292 A. I did not.

Q. Did you have any conversation with your brother Martin between March the 25th and April the 2nd concerning the creditors or anything concerning the filing of the petition in bankruptcy? A. I did not.

Q. When was the first time that you heard about "it would be a good idea to file a petition in bankruptcy"? A. When it was related by Mr. Hoffman on the witness stand.

Q. Perhaps you did not understand my question. After March the 25th who was it that suggested it to you, that

a petition in bankruptcy should be filed in the Hymowitz 2293
matter? A. Mr. Schulman.

Q. And it was Mr. Schulman that first brought that to your attention, is that correct? A. That is right.

Q. And prior to the time that Mr. Schulman suggested filing a petition in bankruptcy you had no conversations or had nothing more to do with the Hymowitz matter? A. I think on April 1, 1937, I had sent to our client, Harry Levy, a form of proof of claim to be executed by him in the assignment proceeding, and I also sent—

Q. Did you get it back? A. I do not recall.

Q. Well, have you got it? A. I don't know whether it's in the file or not. 2294

Q. But did you receive such a proof of claim back from Mr. Harry Levy? A. I have no recollection as to whether I did or not.

Q. Well, that was a proof of claim for an assignment proceeding, was it not? A. That is right.

Q. It had nothing to do with bankruptcy? A. Nothing at all.

Q. Now I want to know definitely when you first heard about filing a petition in bankruptcy. A. On April 2, 1937.

Q. From whom? A. Mr. Schulman.

Q. And what did he tell you? A. He told me that his 2295
clients, Schwartz & Zuckerman, Ribach & Mantis, had attended this creditors' meeting at the Dry Goods & Furnishings Association and that a certain arrangement or agreement had been made with Mr. Hoffman with regard to the inspection of the assets by the creditors and the subsequent sale and liquidation for the purpose of effectuating settlement with the creditors.

Q. That was on the 2nd of April? A. That is right.

Q. Correct me if my memory does not serve me right, but did you testify on direct examination that Mr. Cohen had called you up concerning looking over the store and

2296 people were going down looking at the merchandise? A. That is right.

Q. So as far as you know when Schulman told you that, you knew that wasn't absolutely correct because Cohen told you that creditors had been allowed to go into the store; isn't that correct? A. No. Schulman called me and told me that while the creditors had inspected the assets that they couldn't reach Hoffman for the purpose of completing and consummating the arrangement which Hoffman had made with the creditors at that meeting.

Q. Well, what was that arrangement? A. For the pur-
2297 pose of receiving bids from the people who inspected the assets and then to arrange for a sale of the assets.

Q. And who were those creditors? A. beg your pardon?

Q. Who were the creditors that couldn't get this arrangement—

Mr. Walsh: Will you read the question, Mr. Stenographer?

Q. (Read.) A. Schulman told me that his clients couldn't complete that arrangement.

Q. That was on April the 2nd? A. That's right.

Q. That was the date that the petition was prepared?
2298 A. It was either prepared that day, later that day or Saturday morning.

Q. And did Schulman come over to the office on that occasion on April 2? A. No. I think he came over on Saturday morning, April 3.

Q. What was the conversation you had with Mr. Schulman on April the 2nd? A. Schulman related or told me that he had tried to reach Hoffman after his clients had told him that they were having difficulty in contacting him and he said that he had—

Q. Did you tell Schulman at that time that Mr. Cohen

said there was no difficulty about seeing the stock? A. Well, there was no question about seeing the stock. They had seen the stock. It was a question of reaching Hoffman for the purpose of completing the arrangements that Hoffman said he would make with the creditors at the meeting.

Q. Well, what are those arrangements that Hoffman made at the meeting? A. Well, the creditors said they would send various people to look at the stock to determine what the highest price could be obtained for the stock.

Q. And Cohen told you that they could go in and see the stock when they wanted, didn't he? A. No. I said on direct examination that Cohen called me several days after the meeting of creditors on the 25th and told me he had received telephone calls from some of the people who went to the store to inspect the assets and that they found the store closed on that particular morning, and I then called Hoffman for the purpose of finding out why the store was closed when the arrangement had been made at the meeting of creditors that the store would be open, and when I talked to Hoffman about it and he said he had arranged with Kolman to be there and there was probably some delay, and I then called Cohen back and I told him to have the people wait there, that Kolman was probably delayed and thereafter Hoffman called me and told me that he had heard from Kolman and that Kolman had opened the store and that people were there inspecting the assets.

Q. So that between March 25 and April 2 your brother did not tell you that Schwartz or that Mantis was at the meeting of the creditors? A. That's right.

Q. You are sure of that? A. Positive.

Q. You are an attorney, are you not, sir? A. I am.

Q. And what happened after you had this conversation with Mr. Schulman? He said he had two creditors, is that correct? A. No. He said that he had three creditors.

2302 Q. Who were they? A. Ribach & Mantis.

Q. That's one. A. Schwartz & Zuckerman.

Q. Two. A. And Kreiselman—A. Kreiselman & Sons I think is the firm name.

Q. He had Kreiselman, too? A. Yes.

Q. And you had Harry Levy? A. That's right.

Q. Now do you remember where Harry Levy signed the petition? A. At our office.

Q. Do you remember where Kreiselman signed the petition? A. I do not recall. I do not know. I don't think I was present at the time he signed it.

Q. Well, isn't it a fact that you sent that petition out
2303 to Kreiselman, had a boy take it over to his place of business? A. I have no recollection of that.

Q. You don't remember that? A. No, sir.

Q. But Harry Levy you do remember signing in your office? A. I am pretty sure he did.

Q. Now, Mr. Goldman, I show you Government's Exhibit 3 marked in evidence, which is the involuntary petition in bankruptcy. Did you prepare that (handing to witness)? A. Yes. This was prepared in our office.

Q. And when did you first find out that you prepared it? A. When we had a conference with the attorneys in connection with the preparation of this case for trial.

2304 Q. And who was at that conference? A. My brother Martin, Mr. Kandell, Mr. Schulman, Mr. Corbin, Mr. Bennett and Mr. Fielding.

Q. And isn't it a fact, Mr. Goldman, that the reason that you are now testifying that this was prepared in your office is because Schulman said that he was going to deny that it was prepared by him? A. No, sir.

Q. And isn't it also a fact that the reason you are now admitting that this was prepared in your office is because you can almost see the fact that it was on the form of Goldman, Malter & Goldman; isn't that a fact? A. No, sir.

Q. Well, usually if you use somebody else's form wouldn't 2305
the usual practice be just to strike out and put Jacob Schulman and strike Goldman, Malter & Goldman out? A. Not necessarily.

Q. Do you see how carefully that has been eradicated? It is hardly perceptible. A. This was handled by the stenographer in the office and I assume in erasing she erased it—

Q. Very thoroughly. A. Well, you can still see that there were erasures on the paper.

Q. Is that the reason why you are now admitting it, that that is the form of Goldman, Malter & Goldman? A. No, sir. 2306

Q. Because the Bureau has a method of detecting that? A. No, sir.

Q. You didn't know that, did you, that the Bureau has a method whereby they can detect underneath—A. No, sir.

Q. —and they can detect what has been rubbed out? A. No, sir.

Q. Isn't that the reason you are admitting that? A. No, sir.

Q. Do you know what perjury is? A. Yes, sir.

Q. What is it? 2307

Mr. Corbin: Just a moment. I think that is insulting and there is no reason in the world for that kind of an examination of this witness.

The Court: I will sustain the objection.

Q. Now I call your attention, Mr. Goldman, to the fact that No. 1 in the petition, which was prepared by you, alleges that the act of bankruptcy was that the alleged bankrupt "with intent to hinder and delay transferred and set over funds in the value of $500 applicable to the payments of the debts of the alleged bankrupt."

2308 Is that the act of bankruptcy upon which you predicated the filing of this involuntary petition? A. That and allegation No. 2?

Q. And what is that allegation? Is that "While insolvent the alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $500 to various of his creditors with intent thereby to prefer such creditors."

So there are two acts of bankruptcy there, is that correct? A. That is right.

Q. Mr. Goldman, you prepared this, did you not? A. It was prepared at our office.

Q. Wel. you were the legal draftsman, weren't you?
2309 A. I did not dictate that petition except that I gave the information to the girl and told her to prepare it—

Q. Well, you told her to put the $500 under allegation No. 1, didn't you? A. Well, that's a printed form and we always—

Q. No. You filled this in; this is typewritten. This $500—

Mr. Corbin: Let him finish the answer, please.

The Witness: I will finish the answer.

Q. Yes. A. (Continuing)—and we always use in the filing of an involuntary petition allegations No. 1 and
2310 No. 2 as a matter of practice.

Q. Whether or not you have any basis upon which you are predicating that allegation? A. That's right.

Q. So that with no information at all you would say that this individual has paid over $500 to the detriment of the creditors, is that correct? A. We knew at that time that Hymowitz had gone to jail and that there was some fraud committed against the City so that there was no danger or question about that there might be some fraudulent transfers or preferential payments.

Q. You did not think highly of Hymowitz, did you? A. I had nothing to believe anything to the contrary.

Q. Well, is that the reason you put that allegation in there, Nos. 1 and 2, that he had paid over $500 to some people? A. That's a form, the allegation we use— 2311

Q. Well, you had no basis upon which you could predicate that allegation, did you? A. We had no definite information as to the allegation—

Q. And you were speculating because he had been in jail, that perhaps he did that? A. Yes, sir.

Q. Now you see down here, at No. 6, that there is a specific allegation that "On or about the blank day of blank the alleged bankrupt made an assignment for the benefit of creditors." You knew, did you not, that Hymowitz had made an assignment for the benefit of creditors prior to the time that you prepared Government's Exhibit 3? A. I did. 2312

Q. Why didn't you put that in there? A. The girl evidently—

Q. Oh. Well, you told her what to put in?

Mr. Corbin: Will you let him finish one answer, please?

Mr. Walsh: I would be happy to, sir.

A. It was evidently an inadvertent omission.

Q. By whom? A. By the stenographer. 2313

Q. What, that she didn't put the assignment in? A. That's right.

Q. Well, you looked it over after she typed it up? A. Well, that was done quite hurriedly and it had to be filed before 12 o'clock on Saturday morning, and there was quite a rush in trying to get all the papers filed in order to stay the sale.

Q. Didn't you tell me a few moments ago that that may have been prepared on April 2nd? A. I said it may have been prepared in the late afternoon—

Q. Of April 2? A. Of April 2 or April 3.

2314 Q. Yes? A. Or the morning of April 3.

Q. Or you also said that it may have been prepared on April 2. A. That is right.

Q. The day prior to April 3 on which it was filed, is that correct? A. It may be. I don't know; I am not sure at this time.

Q. Well, at least you had an opportunity of looking it over, didn't you? A. I did not.

Q. You never looked this over? A. Probably when it was being signed I may have glanced at hurriedly.

Q. Well, at least you knew that they had an act of bankruptcy, otherwise the petition would be no good? A. Well,
2315 our girls know, in preparing petitions, that they allege allegations 1 and 2.

Q. Well, on the same day when you were preparing the notice—the affidavit and notice of motion to stay the sale,—there you allege that he has filed a petition or an assignment for the benefit of creditors, didn't you? A. I did.

Q. And did you look that over carefully or does your girl know how to draw that up, too? A. No. That I examined carefully.

Q. You had to give her the information? A. I did.

Q. Did the girl know that Abraham Schwartz and Samuel Zuckerman were going to be petitioning creditors? A. She
2316 did.

Q. Who gave it to her? A. I did.

Q. Did the girl know that Nathan Ribach and Samuel Mantis were going to be petitioning creditors? A. She did.

Q. You dictated that too, didn't you? A. I did.

Q. Well, how do you usually dictate a form? Don't you say "Fill out the form and the petitioning creditors and this act of bankruptcy"? A. I usually give the girl as much information that I think she needs in the preparation of the petition and she prepares it.

Q. Well, what information do you think she needs in

the preparation of an involuntary petition in bankruptcy? A. She needs the district in which the petition is to be filed, the name of the alleged bankrupt, the names of the petitioning creditors and the amounts of their respective claims, the nature of the business in which the alleged bankrupt was engaged in, the location of the business, and the names of the individuals who are to sign the petition and the acts of bankruptcy. 2317

Q. So you told her what to put in for the acts of bankruptcy? A. I had dictated the petition and order for the stay in which I related to her and dictated to her the making of the assignment, that, in addition to the other printed form or the usual form of allegations that we make in every petition, act 1 and 2. I had assumed she would put it in. 2318

Q. You had assumed that she would put in the fact—No. 6? A. That's right.

Q. But you looked it over and you found out that she did not put it in? A. I did not notice it at the time the petition was filed or prior to the time it was filed.

Q. Well, you have had quite a little experience, have you not, Mr. Goldberg, in drawing involuntary petitions in bankruptcy up, haven't you? A. I have.

Q. You have also had quite a little bit of experience in assignment work? A. I have.

Q. As a matter of fact, you are quite expert, are you not? A. Well, I consider myself— 2319

Q. With due modesty? A. I beg your pardon?

Q. With due modesty. A. Yes, sir.

Q. You have testified on prior occasions that you consider yourself an expert in insolvency proceedings, haven't you? A. Well, I do. I consider—

Q. Have you testified to that before? A. I have.

Q. So you know what constitutes an act of bankruptcy, don't you? A. I do.

Q. Now isn't it a fact, Mr. Goldman, that had you in-

2320 serted that on or about the 24th day of March that the bankrupt made an assignment for the benefit of creditors, and if you had put that allegation in you could not dismiss the petition without sending notice to all the creditors? Can you answer that question yes or no? A. That is right.

Q. That is correct? A. That is correct.

Q. But with this you do not have to send notices out because that is a jurisdictional defect or it does not state facts sufficient to create or constitute an act of bankruptcy? Isn't that a fact? A. I think that petition is perfectly valid in the manner in which it is drawn.

2321 Q. I never disputed that, and I don't dispute it now, but I ask you whether or not the reason that you did not put in, on this petition, Nos. 1 and 2, the fact that that does not constitute sufficient facts when brought to the attention of the court and therefore it can be dismissed on motion which was subsequently done? A. Well, that is just—

The Witness: Will you read that question again, please?

Q. I will reframe the question. Perhaps it wasn't clear. Now you did make a motion, did you not, on or about

2322 May 6th, 1937, or prepared the papers for a motion, Government's Exhibit 3, on or about May 6th, 1937, to dismiss this petition in bankruptcy? A. I did.

Q. And that motion was granted? A. It was.

Q. And there was no notice sent to any creditors; it wasn't necessary? A. To the individual creditors?

Q. Yes. A. No, sir.

Q. That wasn't necessary, was it? A. No, sir.

Q. Now my question is this: Had you inserted in 6 that an assignment for the benefit of creditors had been filed by this bankrupt, could you have made the same mo-

tion without notice to creditors? A. A motion could have been made but instead it would have to be done by order to show cause. 2323

Q. To all of the— A. The judge in all likelihood would probably provide for service on all—

Q. On all creditors? A. On all creditors.

Q. And isn't that the reason that you, knowing that this petition would be dismissed subsequently did not insert it in No. 6 that the act of bankruptcy was the assignment for the benefit of creditors? A. That is not so.

Q. When you drew this motion did you look up the law in it or did you speak to anyone about it? A. I looked up the law. 2324

Q. You did? This is the one, this is the affidavit of Jacob Schulman, in the matter of the First 88 Cent Stores that I am referring to, and also Government's Exhibit 3, and I ask you whether or not those affidavits, so far as the law is concerned, are not exactly the same?

Mr. Corbin: I object to it as irrelevant and immaterial.

Mr. Walsh: I think it is proper in view of my former question, whether or not he did not consult with Mr. Schulman on that:

The Court: This is with reference to the 88 Stores? 2325

Mr. Walsh: The 88 Stores that Mr. Schulman testified to, and they are the exact same—duplicate affidavits so far as the law is concerned.

The Court: I will sustain the objection to that, gentlemen. I think you are getting off into a remote field, and it would go into the trial of the 88 Cent Stores case. I will state the law to the jury at the case's conclusion.

Mr. Walsh: Well, the only purpose, if your Honor please, that I was going to ask him that question—

2326 Mr. Corbin: I object to any statement of its purpose.

The Court: Yes. I think I see your purpose, Mr. Walsh, but there is a line—

Mr. Walsh: Very well. I won't press it, if your Honor please.

The Court: Very well. I will sustain the objection.

Q. Did you know that Schulman was going over to the federal court on April 5th for an argument before Judge Coxe based on that stay that you had drawn up? A. Yes.

2327 Q. Did he communicate with you and tell you that? A. He did.

Q. And after the meeting did he communicate with you then? A. I don't recall him talking to me about it.

Q. Well, did he tell you that this fellow Hoffman had made certain allegations to Judge Coxe concerning your brother, Martin Goldman's acts in this case? A. Never told me about it.

Q. He never did? A. No, sir.

Q. Well, did you know that your brother went over to Schulman's office on April 7th? A. I did not.

Q. Well, did you have any conversation with Mr.—your

2328 brother Martin concerning the action before Judge Coxe? A. No, sir.

Q. You never did at any time? A. No, sir.

Q. Was a receiver ever appointed pursuant to the filing of this involuntary petition in bankruptcy? A. No receiver was appointed; no application was made.

Q. Who makes the application? A. Any creditor can make an application for the appointment of a receiver.

Q. I know that, but isn't it usually the function of the petitioning creditors' attorney to make an application for the receiver? A. Not necessarily.

Q. Well, for the purpose of conserving the assets—I know it isn't "necessarily," but isn't it usual? A. Sometimes as a rule— 2329

Q. Isn't it usual, Mr. Goldman? A. As a rule the attorney for the petitioning creditors—

Q. Requests the receiver? A. If he deems it necessary, usually makes the application for the appointment of a receiver.

Q. And a petitioning creditor or the attorney for a petitioning creditor could never be the receiver or the trustee, could he? It isn't the usual practice? A. I don't think the judges in this district do that.

Q. What is that? A. I don't think the judges do that. 2330

Q. That is what I say— A. Appoint the attorney for the petitioning creditors as receiver.

Q. They never do it, do they? A. I have never heard of one.

Q. Isn't it a fact that at one of the meetings after a receiver has been appointed they have a meeting of creditors and then the creditors elect the trustee? A. That's right.

Q. Was it your purpose to have Mr. Schulman act as the attorney for the petitioning creditors and then have the firm of Goldman, Malter & Goldman act as the trustee in this particular case? A. No, sir.

Q. That was never discussed? A. It was never discussed, and furthermore the attorney for the petitioning creditors can become the trustee. There is no disqualification. 2331

Q. Well, was that discussed at any time between you and Mr. Schulman? A. Never was.

Q. Now, Mr. Goldman, do you still say that you didn't look over the petition, Government's Exhibit 3, and notice that the No. 6 was not filled in?

Mr. Corbin: Now I object to it "whether he still says it or not."

The Court: I will sustain the objection.

2332 Q. You appeared before the grand jury voluntarily, didn't you? A. I requested to appear before the grand jury.

Q. And you were given an oath when you appeared before the grand jury, were you not? A. I was.

Q. And it is almost the same oath when you appeared in this court? A. That is right.

Q. Is that correct? A. That is correct.

Q. When you appeared before the grand jury, was this question asked you:

"Q. What happened next? A. Mr. Schulman then sent the papers down to our client. I believe the client signed
2333 them and they were filed the following day."

Do you remember that question being asked you? A. I do.

Q. And do you remember making that answer?

Mr. Corbin: Wait. May I have the record show what counsel is reading from?

Mr. Walsh: Page 80 of the grand jury minutes.

Mr. Corbin: The official transcript?

Mr. Walsh: The official transcript, yes, sir.

Mr. Corbin: May I ask that that be marked for identification so that—

2334 Mr. Walsh: As I read from any page, Mr. Corbin, I will mention the number of the page and there won't be any question.

Mr. Corbin: I want the testimony of this witness from which he is reading, that particular part of it, that paper, marked so that we will know.

The Court: Yes. Very well, let it be marked.

Mr. Corbin: For identification.

The Court: For identification.

(Marked Government's Exhibit 24 for identification.)

Mr. Walsh: That page, page 80. That is what I 2335
am reading from.

Mr. Corbin: For the present.

Mr. Walsh: That page.

Mr. Corbin: Yes. Now I object to the question upon the ground that it was not in derogation or conflict with anything that the witness has testified to.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Do you remember my question? If not, Mr. Stenographer, will you kindly read it.

Q. (Read.) A. I do. 2336

Q. The next question: "Q. Did Mr. Schulman confer with you about the papers that were to be drawn up? A. No." Do you remember being asked that question and do you remember making that answer? A. I do.

Q. Did you make that answer? A. I did.

Q. And was it true at that time? A. At that time it was.

Q. This was on January 14, 1940? A. I think that is the approximate date.

Q. That is the date that you appeared before the grand jury? A. Yes.

Q. And at that time it was true? A. I believed it to be true and that was my best recollection at that time. 2337

Q. The next question: "Q. Did Mr. Schulman show them to you? A. I don't remember seeing the petition." Do you remember that question being asked you and did you make that answer? A. I did.

Q. And was it true at that time? A. It was.

Q. But now it is not true. A. No. I don't say it isn't true. I say that at that time—

Q. Well, it is contrary to the testimony that you are giving now under oath, is it not? A. It is.

Q. And the first time that you found out that it was untrue is when the four defendants got together—

2338 Mr. Corbin: That's right.

Mr. Walsh: I know. I didn't want to say anything.

Mr. Corbin: That is right. Schulman showed him he was wrong.

Mr. Walsh: Wait a second.

Will you read what I have said thus far?

Q. (Read.) —at Corbin's office, and Schulman wouldn't admit that it was prepared in his office; isn't that the fact? A. No, sir.

Q. Didn't Schulman say that he wasn't going to be the
2339 goat in this thing all through? A. No, sir.

Q. That he wasn't going to take all the responsibility? A. No, sir.

Mr. Walsh: I am still reading from page 80, if your Honor please.

The Court: Very well.

Q. Do you remember being asked this question and do you remember making this answer: "Q. Do you not remember seeing the petition? A. No. I didn't see it until some time after it was filed."

2340 Was that true when you made that statement? A. At that time it was true.

Q. The next question: "Q. Are you absolutely sure of the fact that you didn't see it before it was filed? A. I am pretty certain. I did not. I don't remember seeing because I know Mr. Schulman has handled cases of this type and I would not question his preparing it properly. I don't remember seeing it. It may have been sent to the office."

Do you remember making that answer to that question? A. I do.

Q. And was that true? A. At that time I believed it to be so.

Q. I am now reading from page 82— 2341

Mr. Walsh: Do you want that marked, too?

Mr. Corbin: No.

Mr. Walsh: I will mark each page that I am reading from.

Mr. Corbin: I won't bother with that, but I am going to claim the right to examine the entire transcript of this witness's testimony.

The Court: Very well. Let the entire transcript be marked for identification, the testimony that this witness gave before the grand jury, and then you can refer, Mr. Walsh, to whatever page your question refers to. 2342

(Marked Government's Exhibit 25 for identification.)

Mr. Walsh: On page 82.

Q. "Q. You are definite, you did not see that petition before it was filed? A. That is right." Is that true now? A. No, sir.

Q. Was it true then? A. It was.

Q. "Q. You would let your client sign it without having seen it? A. Yes." Was that true then? A. It was.

Q. Is it true now? A. No. 2343

Q. "Q. Where did your client see it? A. I believe at his place of business." Were you asked that question and did you make that answer? A. I did.

Q. And was it true then? A. It was.

Q. And is it true now? A. No.

Q. And that all was refreshed at the meeting when you, Kandell, Martin Goldman and Schulman were together—

Mr. Corbin: And Corbin.

Q. —and Corbin and Bennett and Mr. Fielding and Mr. Mintzer, I presume?

2344 Mr. Fielding: Not Mr. Fielding.

Mr. Walsh: No. Well, I don't want to start an argument with you gentlemen.

Mr. Corbin: Mintzer was.

Q. Now you remember also that on another occasion you testified before the Honorable Jacob Marks, did you not? A. I did.

Q. And were you administered an oath to tell the truth, the whole truth and nothing but the truth at that time, too? A. Yes, sir.

Q. The same oath that you took before the grand jury?

2345 A. Yes, sir.

Q. And the same oath that you took in this present trial? A. Yes, sir.

Q. To tell the truth? A. Yes, sir.

Mr. Corbin: I will concede that he testified there—

Mr. Walsh: Will you concede also that he testified under oath—well, I do not want any concessions from you so far as this witness's testimony is concerned.

Mr. Corbin: Oh, I thought you did. Well, I will concede if you want it. If you don't, all right, that

2346 he did not testify that he prepared the petition. I think I asked him on direct about it.

Q. In any event, on two occasions when you were under oath you testified that you had never seen the petition, that you did not prepare the petition, is that correct? A. I think that was my testimony at that time, and I so believed it to be the fact.

Q. And that was the fact at that time? A. Yes, sir.

Mr. Walsh: I am reading now, Mr. Corbin, from page 84.

The Court: Of the grand jury minutes?

Mr. Walsh: Of the grand jury minutes, January 17, 1940. 2347

Q. Were you asked this question, Mr. Goldman, and did you make this answer: "Q. And you find that you were misstating the case before Referee Marks, is that it? A. I had not had an opportunity to refresh my recollection when I testified in that proceeding. When I was in there"—and two dashes, Mr. Fielding—"I had the file on my desk, Mr. Malter said I would have to go over and testify that afternoon about two o'clock, and told me a day or two before, and I put the file on my desk anticipating that I would go through it that morning." 2348

Do you remember being asked that question? A. I do.

Q. And did you make that answer? A. I did.

Q. And was it true at that time? A. It was.

Mr. Corbin: What was that?

Mr. Walsh: That was the hearing before Referee Marks.

Mr. Corbin: What was it that he said before Marks that he said before the grand jury?

Mr. Walsh: That he had not had an opportunity of refreshing his recollection but that he put his file— 2349

Mr. Corbin: About what?

Mr. Walsh: That he put his file—"put the file on my desk anticipating that I would go through it that morning."

Q. "Q. Now, you have your file with you? A. Yes."

Mr. Corbin: I don't understand it.

Mr. Walsh: Well, it will be very clear in a moment, I hope.

Mr. Corbin: All right.

350 Q. I will continue reading—

Mr. Corbin: Because whatever that relates to, Judge, it must be something that was asked the witness so far.

Mr. Walsh: It does.

Mr. Corbin: So that the reading of the grand jury minutes doesn't tend to contradict the witness in that regard.

Mr. Walsh: Page 86 of the grand jury minutes, Government's Exhibit 25 for identification.

The Court: Do you mean by that, Mr. Corbin,
351 that you make an objection to the last question that was asked him?

Mr. Corbin: Yes.

The Court: Wherein, Mr. Walsh, does that contradict any of his present testimony? I don't recall myself. Of course it is impossible to recall all of the testimony from time to time.

Mr. Walsh: Well, he said that the reason that he gave in the grand jury was that he did not have an opportunity of refreshing his recollection when he testified before Referee Marks, and I want to know whether or not that was true, that he did not have
352 an opportunity of refreshing his recollection when he testified before Judge Marks.

Mr. Corbin: About what?

Mr. Walsh: About the testimony before Judge Marks when he denied having prepared or having seen the petition in bankruptcy.

The Court: I will overrule the objection, Mr. Corbin.

Mr. Corbin: I except.

Mr. Walsh: And then there was this question on page 86.

Q. "Q. Mr. Goldman, if you don't mind my interrupting, this is really not quite relevant to the point we are now discussing, which is just when you saw the petition first. Have you anything to add regarding the question when you saw that petition first? A. Nothing further than what I said." Do you remember that colloquy? A. I do.

Q. At the grand jury? A. Yes.

Q. And was it true and is that what was said to you and is that what you said? A. That is right.

Q. "Q. And that is that you didn't see the petition before it was filed? A. That's right.

"Q. And that you remembered his about two and a half years after the event but that you didn't remember it about a year after the event, is that right? A. That's right, I had not looked at the file at that time."

I am now reading from page 84:

"Q. Now, you have your file with you? A. Yes.

"Q. Would you go through your file and show the grand jury just what it was that gave you the idea that you had not seen the petition before it was filed? A. I came across the file—the notice of motion and affidavit that I had prepared on behalf of Mr. Hoffman in connection with the motion to dismiss the petition, and attached to those motion papers was a copy of the involuntary petition, and I had then recalled that it was when I had the conversation with Mr. Hoffman and he had requested that I prepare these papers for him and that it was—when I first got a copy of the petition at that time to make the motion that I first saw the objection to the petition."

Do you remember saying that? A. I do.

Q. And at that time when you were testifying before the grand jury on January 17, 1940, you had your whole file with you. Is that a fact? A. I did have the file with me.

Q. And you said that refreshed your recollection, that

2356 the first time that you saw the petition when you made the motion to dismiss the petition—is that the explanation that you gave the grand jury? A. That is not. The question was when I first noticed that the petition did not contain the allegation that an assignment for the benefit of creditors had been made, and I testified that the first time I noticed it was when I—when I was arranging to prepare the motion papers to dismiss the petition.

Mr. Walsh: May we have a recess now for about two minutes?

The Court: Yes. We will take one for about six minutes.

2357 (Short recess.)

Q. Do you remember, Mr. Goldman, that I asked you the question whether or not you had consulted with Mr. Schulman prior to April 2, 1937, and you said that you had not; is that correct? A. That is right.

Q. Do you remember when you were before Referee Marks you were on the stand and you had taken an oath when you testified in this proceeding, is that right? A. That is right.

Q. And this question was asked you:

2358 "Q. When did you first consult with Mr. Schulman, or talk to him about this case? And it refers to the Hymowitz case, is that right? A. Right. That was shortly after that assignment for the benefit of creditors was filed."

Q. Do you remember being asked that question and did you make that reply? A. I do.

Q. Was it true then? A. At that time I so believed.

Q. And is it true now? A. No, sir.

Q. "Q. You say shortly after the assignment was filed? A. Yes, sir."

Do you remember being asked that question and making that reply? A. I do.

Q. Was it true then? A. It was. 2359

Q. Is it true now? A. No, sir.

Q. Well, you just testified on direct examination, did you not, today, that you had not consulted with Mr. Schulman prior to April 2, 1937? A. That is right.

Q. "Q. How many times between that time, that is, the first time and that time just before the petition was filed, did you consult with him? A. I don't remember the number of occasions."

Do you remember being asked that question and did you make that answer? A. I did.

Q. The next question by the referee:

"Q. Every day? A. No. It may have been on four or 2360
five occasions."

Did you make that answer on that occasion? A. I did.

Q. In other words, you testified today that you had not seen Schulman prior to April 2nd, the day that the petition was filed? A. That is correct.

Q. And in this testimony you said that you had conferred with him on four or five different occasions. Now which is true? What you testified today, that you had not consulted with him, or had you consulted with him prior to April 2, 1937? A. At the time that I testified before Referee Marks I think I pointed out that I didn't have any of the 2361
papers with me and I had nothing to refresh my recollection, and at that time I believed—

Q. You were under oath on that occasion, were you not?

Mr. Corbin: Let him finish his answer.

Mr. Walsh: I will be happy to do so.

A. (Continued) I was under oath, and at that time I believed the testimony I gave to be true, and the testimony I gave today is true.

Q. But before Referee Marks on April 1, 1938, your

2362 recollection at that time was better than it is now, isn't that a fact? A. With respect to certain things.

Q. Well, was your memory better with respect to the number of occasions you consulted with Schulman after the assignment for the benefit of creditors and prior to the filing of the petition in bankruptcy? A. I referred at that time to all the occasions or conferences I had, whether before the petition was filed or thereafter, in connection with the dismissal of the petition.

Q. Didn't you hear me read this question and wasn't it specific:

2363 You were asked how many times and how many occasions had you consulted with Schulman between the assignment for the benefit of creditors and the filing of the petition in bankruptcy and you said four or five times. A. Well, I was mistaken at that time.

Q. That was in 1938, wasn't it? A. That is right.

Q. And was your memory better on that occasion than it was today when you were on the stand when you denied you had ever consulted with Mr. Schulman prior to April 2, 1937? A. My memory is much better today with regard to those facts.

Q. It is? A. Yes, sir.

2364 Q. Is it a fact that your memory is better today that you had a conference with Hoffman, Wishbow and Morton Goldman, and you made the story fit the facts that you were going to testify to—

Mr. Corbin: That last question, I see, has left me out.

Mr. Walsh: Right, Mr. Corbin.

A. At Mr. Corbin's office and Mr. Corbin was there.

Redirect examination by Mr. Corbin: 2365

Q. There was not any framing—

Mr. Walsh: I have not indicated by any word or action that Mr. Corbin framed anything. He was not present at all the times they were discussing it.

Q. About this conference down there in my office, what is the fact as to whether you and Schulman disagreed there as to whether you or he had prepared that petition? A. We did disagree.

Q. And there was quite a little bit of talk about it, you saying one thing and he the other? A. That is right. 2366

Q. Is it or is it not a fact—

Mr. Walsh: I object to this form as leading, if your Honor please.

The Court: Objection overruled.

Q. Is it or is it not a fact that you then and there came to the realization that he was right and you were wrong about your having given it to your girl to fill in? A. That is so.

Q. Up to that time had you honestly believed that the testimony that you had given before was accurate? 2367

Mr. Walsh: I object to the characterization of "honestly."

The Court: Objection sustained.

Mr. Corbin: Exception.

Q. Did you or did you not intend at the time when you testified before the Grand Jury to tell the truth?

Mr. Walsh: I object to that as calling for a conclusion. The fact is the record speaks for itself as to what he intended.

The Court: I will overrule the objection.

2368 Q. You intended to tell the truth? A. Yes, sir, I did.

Q. And you stated you did prepare it yourself, although it bears Schulman's name; you realize now that is the fact? A. That is the fact.

Mr. Corbin: That is all there is to that.

Mr. Walsh: I object to that last remark and ask that it be stricken from the record.

The Court: Motion granted.

Q. When you were before the Grand Judy, that was nearly three years after the occurrence? A. That is right.

2369 Q. And on the other occasion when you testified before the referee, was close to a year after the occurrence? A. Yes, sir.

Q. At that time you had left the office, according to what has been read to you by Mr. Walsh, without your papers, you didn't have them there with you? A. That is right.

Q. From the beginning to the end of the Hymowitz matter you and your firm represented this man Harry Levy, is that the truth? A. Yes, sir.

Q. The one who was a witness here this morning? A. That is right.

Q. Did you regard that you had a duty to perform at

2370 all times toward him and to him? A. I did.

Q. Did you in anything you did in that entire period act in what you believed to be your duty to your client? A. I did.

Q. Did you agree to do anything at any time that in your judgment was against his best interests as a creditor? A. I did not.

Mr. Corbin: About those letters, here are copies of them. I ask that they be marked together as one exhibit.

(Marked Defendants' Exhibit E for identification.)

Q. I show you these two letters and ask you if on or about the date they bear, April 1, 1937, you wrote and sent the originals of those respectively to the addressee (handing to witness). 2371

Mr. Walsh: I object to where they were sent.

The Court: Let me see them.

(Letters handed to the Court.)

Mr. Corbin: The subject was brought up on cross examination, sending the claim to his client to sign.

The Court: What is the ground of your objection?

Mr. Walsh: I merely object to the form of the question. He offered them in evidence. I have not seen the letters. If I may see them I might not object. 2372

(Papers handed to Mr. Walsh.)

Mr. Walsh: I object in the first place, on the ground that it is improper redirect examination.

The Court: I will let him reopen the case if there is competent testimony. If counsel objects to them, that the carbon copies have been unaccounted for, I will think it over.

Mr. Walsh: I object on the ground that a proper foundation has not been laid for the introduction of these letters in evidence. 2373

Mr. Corbin: Let me go a little further then, Judge.

Mr. Walsh: And also that these are not the original letters.

The Court: I will reserve decision on it for the time being.

Q. Do you recall on cross examination Mr. Walsh asked you about sending a number of claims to your client, Mr. Harry Levy? A. I do.

2374 Q. I show you first a letter, one of the two letters comprising this Exhibit E for identification, which purports to be dated April 1st—

Mr. Walsh: I withdraw my objection, your Honor.

Mr. Corbin: I can get along.

Mr. Walsh: I know you can, but I will save you the time.

Mr. Corbin: All right.

(Defendants' Exhibit E for identification received in evidence.)

2375 (Mr. Corbin read Defendants' Exhibit E to the jury.)

Mr. Corbin: That is all.

Recross examination by Mr. Walsh:

Q. Mr. Goldman, when you testified before Referee Marks under oath did you intend to fool the referee? A. I did not.

Q. When you testified under oath before the Grand Jury for the Southern District of New York did you intend to fool that body? A. I did not.

Q. Do you intend to fool this body? A. No, sir.

2376 Q. You are under oath now? A. I am.

Redirect examination by Mr. Corbin:

Q. You are sure of that? A. Yes, sir; I said so.

Mr. Corbin: That is all.

(Witness excused.)

ABRAHAM SCHWARTZ, called as a witness on behalf of the 2377
defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live, Mr. Schwartz? A. 557 Bedford Avenue, Brooklyn.

Q. Are you a partner in the firm of Schwartz & Zuckerman? A. Yes.

Q. Did you have any business relations with Paul Hymowitz? A. Yes, sir.

Q. By the way, where was your place of business at that time? A. 15 Orchard Street.

Q. Do you know the members of the firm of Ribach & 2378
Mantis? A. Yes, sir.

Q. And where was their store? A. 17 Orchard Street.

Q. That is right next door? A. Yes, sir.

Q. Do you recall in April of 1937 that something transpired with relation to an obligation of Paul Hymowitz to your firm? A. Yes, sir.

Q. Will you state what happened and what you did? A. We received a letter for a meeting of creditors.

Q. From whom did you get that letter? A. I think that was from a lawyer for the assignee in Paul Hymowitz's case.

Q. Robert Hoffman? A. Robert Hoffman. 2379

Q. And the assignee was Cohen? A. I don't remember that name.

Q. And what did that notice tell you? A. The notice called for a meeting in the letter, telling us you see that we should get, realize about 80 per cent, if you will let him go through the assignment at that time, to sell the assets through the assignee.

Q. Did they call a meeting of creditors? A. Yes, sir.

Q. Did you attend? A. Yes, sir.

Q. Mr. Schulman was not there? A. Not at that time.

Q. And who else was at that meeting? A. Mr. Mantis.

2380 a creditor, and also a man by the name of Mr. Kreiselman, also a merchandise creditor from Orchard Street.

Q. At that time did you have an attorney? A. I didn't have any.

Q. Did you know Mr. Schulman? A. Yes, sir.

Q. Had you ever employed Mr. Schulman prior to this time? A. Yes, sir.

Q. How long before that? A. Oh, about ten or twelve years.

Q. And he handled a great many of your merchandise matters? A. Yes, sir.

Q. Do you know Ribach & Mantis were clients of his?

2381 A. Yes, sir.

Q. What happened at the creditors' meeting, insofar as a discussion taking place about selling these assets through the assignee? A. Well, Mr. Hoffman was there and there was an auctioneer. There were also a few other representatives of creditors. Mr. Kandell, whom I knew, and Mr. Goldman; that is the first time I ever met him there—

Q. That is Martin Goldman? A. I don't know his exact name.

Mr. Fielding: Will you stand up? Is that the gentleman?

The Witness: I cannot really recollect.

2382

Mr. Walsh: We will concede it was Martin Goldman.

The Witness: It was one of the Goldmans, the first time I ever saw him at that time and at that time Mr. Hoffman, the lawyer, want that we should sell out, advising us to sell out the assets, this assignee promising that he would realize for us about 80 per cent.

Q. What did you do and the other creditors? A. I personally asked Mr. Hoffman whether he could assure us of

the amount of percentage and to be guaranteed, so that we would then know what we could realize. 2383

Q. What did he say to that? A. He said no, but he thinks it will get us about 80 per cent.

Q. What did you say? A. I told him he should take in one of our merchandise creditors as co-assignee so that we will be more sure that the assets will be taken care of.

Q. What did he respond to that? A. He said he wouldn't do that under no circumstances.

Q. He would not permit any of the creditors to come into the assignment proceedings? A. No, he would not.

Q. Did you later communicate with Mr. Schulman? A. Yes sir. 2384

Q. What did you tell him? A. I explained to Mr. Schulman the situation.

Q. What did you tell him? A. I told him Mr. Hoffman was at the meeting we had and at that time he told us to give the key to send up our own auctioneer, to see, to appraise the stock, whatever was the value of it, because he at that time said it was worth so much money.

Q. How much money did he say it was worth? A. At the meeting $2500 he said. Then I called up Mr. Schulman and I told him about it, that Mr. Hoffman had said as it was there, that the stock was worth so much, and 2385 he said that at that time, if you allow him to go through with the sale the creditors will realize about $1200, in amount, and if it goes through bankruptcy we creditors would lose a certain amount of money than if the individual assignee took care of it.

Q. You told that to Mr. Schulman? A. Yes, sir, and then Mr. Hoffman made the offer to let us into the store, to bring in our own auctioneer.

A couple of days passed and we kept calling him, day in and day out, before we succeeded at a certain hour to see the stock.

2386 Q. You called Hoffman's office a number of times and could not get him? A. Could not get him.

Q. And is it not a fact you could not get the store opened? A. That is right.

Q. And you sent an appraiser there? A. Yes, sir, I called up an appraiser, an auctioneer, to go down and see that stock.

Q. Who was it? A. I think Nicolmeyer.

Mr. Walsh: I would like to hear what this witness remembers himself.

Mr. Fielding: That is only part of the name.

2387 Mr. Walsh: We will take his answer. It is all right with me.

Q. Did he go down to look the stock over? A. Yes, sir, I met him there.

Q. You went there to the store yourself? A. For a few minutes.

Q. At the time the auctioneer was there? A. Yes, sir.

Q. What figure did he say was the value of the stock? A. He thought the value for all of it would be about $1100, for the stock.

Q. You brought that information back to Schulman? A.

2388 Yes, sir.

Q. Did you get a telephone call on Saturday morning, on April 5, from Schulman? A. No, sir.

Q. Did you call him up? A. No, it was Friday, not Saturday.

Q. All right. What happened? A. Well, I called up Mr. Schulman at that time and told him the entire thing about it, and I told him I have got Mr. Mantis near me, and I think if we decide as to a sufficient amount of creditors, that if Goldman could get some creditors then the assignment would go through, although some of them preferred bankruptcy.

Q. Did you authorize Mr. Schulman to start bankruptcy proceedings for you? A. Yes, sir. 2389

Q. Did you authorize him to sign your name to the petition? A. Yes, sir.

Q. At the time that took place, was Mr. Mantis standing alongside of you, in your store? A. Yes, sir.

Q. Did you speak to Mantis about it? A. Yes, sir.

Mr. Walsh: I object to all of these leading questions.

The Court: Sustained.

Q. What did Mantis say? A. Mantis spoke to Mr. Schulman in my presence and said he authorized him to insert his signature, too. 2390

Q. Did you ever hear about the dismissal of the petition in bankruptcy? A. Yes, sir.

Q. Who told you about it? A. Mr. Schulman.

Q. Any objection on your part? A. No, sir.

Q. Did you also understand that the assignment proceeding was to be dismissed or disposed of? A. Yes, sir.

Q. Was that satisfactory to you? A. Yes, sir.

Q. Those few steps meant the carrying out of the sale of the assets in bulk?

Mr. Walsh: I object to that. 2391

The Court: Sustained.

Mr. Walsh: Let him testify, not you.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. When did you first learn, Mr. Schwartz, that the petition in bankruptcy was dismissed? A. When it was dismissed, I didn't know it.

Q. Who told you? A. I didn't know when it was dismissed, the time it was dismissed.

2392 Q. Did Schulman tell you he was going to dismiss it? A. Yes, sir.

Q. When? A. Well, it was after the bankruptcy, it was after the hearing before a certain court, before a certain Judge Knox—I don't remember the name at that time.

Q. Were you there? A. Yes, I was there, and Mantis and Mr. Kreiselman and all of the creditors for the merchandise.

Q. How did you go down there? A. By taxi.

Q. Who called you up and told you to go down there? A. Mr. Schulman.

Q. What did he tell you? A. He tell me to appear be-
2393 fore Judge Knox or some judge in the matter of that bankruptcy matter, for a hearing.

Q. What did you do? A. I was out there.

Q. Did Mr. Schulman call you up personally? A. Yes, sir.

Q. And what did you do? A. Then I went.

Q. Well, did you communicate with Mr. Mantis? A. Well, we are all in the neighborhood, altogether, one block.

Q. I know that. Did Mr. Schulman call Mr. Mantis up? A. I cannot recollect whether I called Mantis or he called me. We are all there in the same neighborhood.

2394 Q. Who got Kreiselman? A. I cannot recollect. We are all in the same block, or were at that time.

Q. Now you say your attorney told you that the petition in bankruptcy was going to be dismissed? A. Yes, sir.

Q. You don't remember, do you, what he said? A. I remember he told me it was going to be dismissed on a certain basis of 40 per cent basis in cash, and a settlement that we were going to receive on it.

Q. Do you remember that you were down at the United States Attorney's office on April 25, 1938, do you remember that? A. Yes, sir.

Q. And had a conversation with one of the assistants there? A. Yes, sir. 2395

Q. And when you received a dividend, how much was the dividend, incidentally? A. Not more than I expected to get. I suppose that I was to get 40 per cent but I only got 17 per cent.

Q. Hoffman promised you 40 per cent? A. No, lawyers in assignment cases promise you more than you get. In my past experience, in business, I never received any such dividend for assignment. I have received notices of assignment like this in the last two weeks, and I would not get a button out of it.

Q. What do you think is the best proceedure, to have it thrown into bankruptcy, and then let the federal court handle it? A. In my opinion? 2396

Q. Yes. A. My opinion is we always take a cash settlement, preferably a cash settlement, always accept it, but in a case like this, it appears to be better to throw it into bankruptcy, to protect all the assets. Besides if anyone wants to stick in business, to remain in business, and he can offer us a sufficient amount we would rather give him a chance to stay in business.

Q. Were you a subscriber to the Dry Goods Association? A. About ten or twelve years ago.

Q. When you get into difficulties do you usually refer your claims to them? A. No—at that time? 2397

Q. Yes. A. About twelve years ago.

Q. In 1937? A. The Dry Goods Association?

Q. Did you know Mr. Kandell? A. I knew Mr. Kandell.

Q. Did you ever refer to him any of your collection items? A. No, not since I didn't belong to them.

Q. Your memory was better in 1938 than it is today? A. In reference to what?

Q. I mean so far as the facts in this case are concerned.

2398 Do you remember this question being asked of you, Mr. Schwartz, and did you make this answer:— A. Well, now, was that in bankruptcy?

Q. "Q. Was that a dividend before bankruptcy? A. It was supposed to be, to my knowledge."

Do you remember that question being asked you and did you make that answer? A. It was supposed to be—to my knowledge what?

Q. That it was a dividend in bankruptcy. A. This one here?

Q. The dividend you got in the Hymowitz case, that is what you said in 1938. A. If it comes to that, if any merchandise storekeeper has been sold out for any kind of trouble, whether it has anything, we consider it like a bankruptcy.

2399

Q. Now I am going to repeat what is down here. I was not there. "A. It was supposed to be, to my knowledge." The question was, "Was that in bankruptcy?" and you said "It was supposed to be, to my knowledge." Do you remember that? In other words, "it was supposed to be to my knowledge in bankruptcy." A. I said bankruptcy if selling out, even to any auctioneer it is a bankruptcy to me.

2400

Q. Well, the next question was this, "Q. Didn't you know that the case was thrown out of the bankruptcy court? A. No." Do you remember being asked that question? A. Yes, sir.

Q. And do you remember making that answer? A. Yes, sir.

Q. So far as you knew it was still in bankruptcy at the time you got the dividend? A. I don't know where I got the dividend from. I got 17 per cent, whether through bankruptcy or sold out, I don't know. I don't know where it came from. I was supposed to get 40 per cent, and I only got 17 per cent.

Q. The next question was this, "Q. Didn't your lawyer 2401
tell you that? A. No." Do you remember making that answer, that your lawyer didn't tell you that it was thrown out of the bankruptcy court? A. Afterwards he didn't tell me until later and I never asked him that question.

Q. You made this statement on April 25, 1938, and that is a couple of years ago, and your memory was better then than it is now? You remembered more of this Hymowitz matter in April, 1938, than you do now? A. What is the question about?

Q. I want to know whether or not you remember being asked these questions in April of 1938 and whether or not 2402
you made those answers? A. My recollection is just as good now as at that time.

Q. Well, do you remember this then, "Q. Well, don't you know that the case was thrown out of the bankruptcy court? A. No." Do you remember that? A. I still don't know, except what I heard in the court that it has been thrown out of bankruptcy.

Q. Didn't you know that the case was dismissed from the bankruptcy court and that the assignee was permitted to sell? A. No. I still don't even know today.

Q. In other words, you think it may have gone through bankruptcy? A. Probably, I don't know; I don't know the 2403
procedure they go through to sell it out.

Q. Schulman never told you it was not in bankruptcy? A. Yes, sir, it went through bankruptcy.

Q. You signed the petition? A. I didn't sign the petition. I told him to sign.

Q. Because it was a Saturday? A. It was a Friday.

Q. And you gave him permission to sign? A. Yes, sir.

Q. So you knew it was in bankruptcy at that time? A. Yes, sir.

Q. And you never knew it went out of bankruptcy? A. When it went out of bankruptcy I don't know.

2404 Q. And Schulman never told you that? A. He told me that if the bankruptcy proceedings were dismissed we would get a 40 per cent cash settlement. I said you can go through with it for a 40 per cent cash settlement.

Q. When was that? A. A week or ten days or two weeks later.

Q. By the way, what is the capitalization of your firm? A. It was about a hundred thousand dollars.

Q. Now who is this appraiser that you sent down there? A. The name is like Nicolmeyer. I remember the name, it started with something like "Nicol".

Q. Who recommended that appraiser to you? A. Some
2405 of my neighbors in the block, but they are no good appraisers, auctioneers. Some of them are recommended to me as the best around the section.

Q. Did you pay him anything? A. Did I pay him anything?

Q. Yes. A. What for?

Q. I don't know. I asked you the question, did you pay him? A. I did not.

Q. Your claim was for $88? A. About that amount.

Q. And you got about 17 or 18 per cent out of it? A. Yes, sir.

Q. As a matter of fact you refused to take it? A. Yes.
2406 sir. Mr. Hoffman had to send it to the chamberlain. I returned it to Mr. Schulman. He took care of all my problems. I sent him the check, and he kept it there for about a year's time.

Mr. Walsh: That is all.

(Witness excused.)

SAMUEL IRVING KANDELL, called as a witness on behalf 2407
of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Kandell, you are one of the men named in this indictment on trial, and as to you it was dismissed at the close of the Government's case by his Honor? A. That is correct.

Q. Do you remember Mr. Hoffman being a witness here on the witness stand in this trial? A. I do.

Q. He referred to a meeting held at your place on March 25, 1937. Were you present at that meeting? A. I was.

Q. That morning you had gone up to Mr. Hoffman's 2408
office with Theodore Goldman, Teddy Goldman? A. I did.

Q. When you were at Hoffman's office in the morning did you or Theodore Goldman, or either of you, threaten bankruptcy? A. We did not.

Q. In the afternoon at the creditors' meeting—will you tell us first very briefly what the discussion was at the creditors' meeting. A. There was a general discussion as to the assets and liabilities, and it is customary for the attorney representing the debtor to usually present his case, and he told us about the assets and liabilities and he told us some details as to what his client, who was in 2409
jail, had caused him to bring about this assignment for the benefit of creditors, and at that time some of the creditors expressed a desire to liquidate this estate, if it were possible, outside of any court procedure, so as to save the expense and realize as much as they possibly could for themselves.

Q. You were there representing whom? A. Butler Bros.

Q. And their claim was about how much? A. Oh, about $170 I believe, or thereabouts.

Q. By the way, what was the approximate total of the claims represented at that creditors' meeting? A. Butler

2410 Bros.' claim would be $470 about, and then you had four petitioning creditors; I don't remember what their claims came up to.

Q. Between $550 and $600, subject to correction. That would make what? A. Close to $1100. And there may have been some other people present, or one person present who represented another creditor. I don't remember.

Q. Do you remember Mr. Goldstein being there? A. I heard his name. It refreshes my memory a bit, but I would not state positively he was there.

Q. What was the basis of your retainer by Butler Bros.? A. Butler Bros. were—well, we have been doing work for
2411 Butler Bros. now for about six years. I might say six or seven years possibly.

Q. You heard about the Hymowitz matter from them or some representative of theirs? A. From Butler Bros.

Q. When with reference to the day you were there with Theodore Goldman? A. The day prior. That would be on or about March 24th, late in the afternoon.

Q. Up at that creditors' meeting, do you remember a meeting outside anywhere that day, at any time that day? Did you hear anything about a proposed arrangement that—

Mr. Walsh: I object to this as leading.

2412 The Court: I will overrule the objection.

Q. That only a part of the money that would be obtained from the buyer would be disclosed to creditors, that the amount that they would show to creditors would be the sum of $1000 or with a couple of hundred dollars or a small sum of money above that to take care of some expenses and the balance, that would be kept secret. Did you hear any such talk? A. At that meeting?

Q. Or outside, after the meeting. A. No, sir.

Mr. Walsh: I object on the ground that it states

facts not in evidence. There is no testimony to the effect that Kandell was out in the outer office. 2413

The Court: I recall the testimony on that. I think it is a competent question. I will overrule the objection.

The Witness: No.

Q. And Mr. Hoffman on his direct examination stated also "that the balance would be kept a secret, would be split between Kandell, me and himself"—himself being Martin Goldman, the difference being between the amount which would be reported to creditors and the amount they would actually obtain from a private buyer. Did you enter 2414 into any such agreement? A. I did not.

Q. Did you hear of any such agreement then or later? A. I did not.

Q. At any time from the 24th of March, when you first heard of the Hymowitz trouble and the time when the matter was completely out of the way, a month later; at any time did you hear of any talk about a secret price that would be kept from the creditors and divided among anybody, you or anybody else? A. I did not.

Q. And then there was some testimony to the effect that after that meeting— 2415

Mr. Walsh: I object to this, your Honor.

Mr. Corbin: I am calling his attention particularly to what was said.

The Court: Overruled. I overrule the objection. He is reading the record there with reference to certain testimony and he is asking this witness whether he heard any such conversation.

Mr. Walsh: Unless he specifies who was present.

Q. The testimony is that after the meeting you and Martin Goldman and Wishbow and Hoffman had a talk

2416 to the effect that $10 would be given to each of the creditors to keep their mouths shut, or something to that effect, that in substance. Were you present at any such conversation? A. No, sir.

Q. Did you hear any such talk then or at any other time? A. I did not.

Q. Did you hear Martin Goldman say in words or substance then or at any other time, "We will throw these creditors $10 apiece to keep their mouths shut"? A. I did not.

Q. Did your know those creditors before that day? A. I knew Mr. Schwartz. I had come in contact with him
2417 on numerous occasions. I don't remember whether Mr. Ribach or Mr. Mantis was there, but there was a gentleman there that I remembered seeing on several occasions; and Kreiselman, I believe that is the first time I ever saw him.

Q. Or Mr. Goldstein? A. Mr. Goldstein I knew. I knew him a great many years.

Q. Whether he was there you don't know? A. I wouldn't say definitely he was there. The first time it was intimated to me was when I heard it here in court.

Q. Well, at that meeting what did Hoffman say about—let me ask you directly this: Didn't Hoffman at that
2418 meeting fix a time for prospective buyers to look at that stock? A. Well, Mr. Hoffman didn't fix the time. It was fixed that the creditors, and I myself made a memorandum of the various hours the creditors present were going to send buyers to look at the stock, and that was told to Mr. Hoffman.

Q. Let me show you a paper—first, let me have it marked for identification.

(Marked Defendants' Exhibit F for identification.)

Q. I show you Defendants' Exhibit F for identification and ask you if you recognize it. A. I do.

Q. What is it? A. This is a schedule of the hours the various creditors represented prospective buyers to look at the stock. 2419

Q. Is that in your handwriting? A. It is in my handwriting, with the exception of the telephone numbers alongside there.

Q. And who wrote that? A. I believe Mr. Cohen wrote those. It looks like his handwriting.

Q. Did you prepare that paper at the time, that is, at that meeting on March 25, 1937? A. Yes, sir.

Mr. Corbin: I offer it in evidence.

Mr. Walsh: I object to it as incompetent, irrelevant and immaterial. 2420

Mr. Corbin: May I ask additional questions, Judge?

The Court: Yes.

Q. Was that paper prepared by you in Mr. Hoffman's presence at that meeting? A. It was prepared in the room where the meeting took place, in everybody's presence, who was at the meeting; each one was represented and everyone was given an opportunity to pick an hour to send somebody down there.

The Court: I will overrule the objection. 2421

(Defendants' Exhibit F for identification received in evidence.)

Q. And a stagger system of time was fixed for them to go down there? A. That is correct.

Q. Why? A. So that no two buyers would be there at any one time and so as to avoid any collusion among buyers in bidding on the merchandise, and so that anyone who went in there would not know who was there or who was not there.

2422 Q. Now what next happened? Did Hoffman call off the sale that was scheduled for April 5th? A. I left town the following morning, that is, on March 26th, for the Easter holidays, and I was gone with my family, oh, until late in the evening of April 3rd or 4th, when I returned from the country.

Q. Well, then, you didn't know anything about the proceedings in the meanwhile? A. I had no knowledge of anything that was taking place.

Q. Well, later you knew generally about the bankruptcy petition having been filed, you heard of that? A. I read that I believe in the Times or in the Daily News Record,
2423 on Monday morning.

Q. Well, without going into details, generally you heard about the matter that went along? A. Well, I wouldn't say that.

Q. You heard however from Butler Bros.? A. I would have received notice if they received any. It is customary for them to send them to the party handling their matters.

Q. You knew about the auction, when the sale, a bulk sale, a private sale was discussed, did you not? A. Well, that was at the general meeting on the 25th of March.

Mr. Corbin: Yes, I know that.

2424 Q. But then intervened the bankruptcy and then the sale was stayed, and then later there was talk about a 40 per cent settlement by way of a bulk sale; don't you recall that?

Mr. Walsh: I object to that.

The Court: Sustained.

A. I recall—

The Court: Do not answer the question.

Q. What do you recall after that? A. I recall some

time about April 7th I wrote a letter to Goldman, Malter 2425
& Goldman, asking for the status of the matter. I don't think I got a reply to that letter; but sometime about April 13th, I received a telephone call, I believe from Teddy Goldman, telling me that the petition in bankruptcy had been dismissed and that they were now in a position to go ahead to vacate the assignment, and try to consummate the 40 per cent settlement that had been talked about prior to this, and he sent up to my office a set of papers asking me to mail them out by registered letters to a list which he attached to these papers.

Q. You did that? A. I did that.

Q. You remember, or don't you, about Endicott-Johnson 2426
coming in with their motion? A. I have a slight recollection of that. I took no interest in the matter at all.

Q. The 40 per cent bulk sale? A. That was never consummated. I filed my claim with Mr. Hoffman.

Q. Finally a sale took place? A. I presume it took place.

Q. And your client got a dividend? A. Subsequently, in 1937, they got a dividend of—

Q. $7.50? A. The $7.50 is the minimum that the law allows.

Q. At any time from the beginning of your connection, 2427
with your knowledge of Hymowitz's transaction, did you hear of any proposition or talk of a sale of those assets at a $1900 figure? A. Never.

Q. Or any proposition being talked about by anyone to the effect that one price would be obtained and another, or lower price, distributed to creditors? A. Never.

Q. Or any talk that the true price of the sale would be kept secret from creditors? A. No, sir.

Q. Or any talk about any kickback from the true purchaser? A. No, sir.

Q. Or from the true purchase price, whoever the pur-

2428 chaser might be? A. Never such conversation as far as I know.

Q. Was there ever a conspiracy, so far as you know, or any agreement between you and any of the defendants, or between any of the defendants, these present defendants, to that effect? A. Not that I know of.

Mr. Corbin: Your witness.

The Court: Mr. Walsh, I presume your cross examination will take some time?

Mr. Walsh: I presume it might, your Honor.

The Court: All right. We will take a recess until tomorrow morning at 10 o'clock.

2429

(Adjourned to July 25th, 1940, 10.00 a. m.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al.

New York, July 25, 1940;
10:00 A. M.

TRIAL RESUMED.

2430 SAMUEL IRVING KANDELL, resumed the stand.

Cross examination by Mr. Schachner:

Q. Mr. Kandell, at the time you went up to Mr. Robert Hoffman's office whom did you represent? A. Butler Bros.

Q. And didn't Teddy Goldman go with you? A. I met him in the lobby of Mr. Hoffman's office. He had called me and told me he had an appointment and he asked me if I would go, if I wanted to go along. And I said I would like to go along in order to look at the books and records and prepare the necessary details to give to the creditors at the time of the meeting.

Q. And did you go up together and see Mr. Hoffman? 2431
A. Oh yes, we met in the lobby and we went into his office together.

Q. And who did Mr. Goldman, that is, Theodore Goldman represent at the time? A. Harry Levy.

Q. He represented Harry Levy? A. That is correct.

Q. And you represented Butler Bros.? A. That is correct.

Q. And he did not represent Butler Bros.? A. No, sir.

Q. Is that right? A. Yes, sir.

Q. Mr. Kandell, have you ever been asked questions about this case before by anybody in the United States Attorney's office? A. I was asked questions in reference 2432
to the matter in the latter part of April, 1938, by Mrs. Juskow and Mr. Spector.

Q. Do you remember this question being asked you:

"Q. You went up because Goldman said he had an appointment? A. He made the appointment. I went up with him."

Mr. Corbin: Just a moment. May I have the time and place fixed when this answer or question was supposed to have been put to the witness?

The Court: Yes.

Mr. Schachner: I think the witness fixed it himself, but I would be glad to oblige Mr. Corbin. 2433

Mr. Corbin: Did he fix the time?

Mr. Schachner: It was on April 25, 1938.

Mr. Corbin: Who asked the question?

Mr. Schachner: Mr. Morris Spector asked the question and Mr. Kandell answered it.

Q. Mr. Kandell, do you remember that? A. Will you mind reading that question and answer again? I am sorry.

Q. "Q. You went up because Goldman said he had an appointment?" A. That's correct.

2434 Q. You were asked that? A. Yes.

Q. And you answered, "He made the appointment. I went up with him." Didn't you so answer? A. Well, meaning I went up with him—I met him in the lobby and went into Hoffman's office with him; that is correct.

Q. Yes. I think the jury will understand that.

Now do you remember the next question that was asked you:

"Well, did Goldman represent anybody?"

Do you remember being asked that? A. I wouldn't remember. Will you let me hear the answer? Maybe I can

2435 connect the two thoughts.

Q. "Well, I asked him to represent me at the time, the claims that I had."

Do you remember that answer? A. I may have asked him to act as attorney for the Association in any claims we will have in the matter, yes.

Q. Was that a full and fair answer which you gave at the time? A. I believe it was.

Q. But you didn't mention anything about his representing Harry Levy? A. To whom?

Q. To Mr. Spector. A. No, I don't think I would have mentioned that. I wasn't asked that question.

2436 Q. You were asked whether he represented anybody, were you not? A. I don't think—did the question say, "Does he represent anybody"?

Q. Yes, and that is what the question says. A. Would you mind reading the question again, Mr. Schachner?

Q. "Did Mr. Goldman represent anybody?" And you answered, "Well, I asked him to represent me at the time the claims that I had." And the next question was, "You asked Goldman to represent you?" And your answer was, "Yes, sir."

Do you remember that? A. That's right; yes. But there is nothing in there that would ask me who Goldman

represented or ask me who I know Goldman represented. 2437
There was no direct question of that type. I wasn't asked who Goldman represents.

Q. Isn't it true that at that time you had no idea that Goldman represented Harry Levy? A. That is not true, because when I spoke to him the evening before he had given me the details and said he had gotten it at the request of a creditor of his, so I couldn't have made a statement to that effect.

Q. When you were up there, when you met in the lobby—did you meet in the lobby by appointment? A. I told you that I met him downstairs in the lobby; that's correct.

Q. Had you asked him to draw up a retainer in which 2438
you were to be retained as co-assignee? A. I don't believe I did.

Q. That was his own idea; not yours? A. It probably was.

Q. Tell me, you produced a paper here the other day—A. The exhibit as to the hours?

Q. Yes. It is Defendants' Exhibit F? A. Yes.

Q. Didn't you? A. Yes, sir. I didn't produce it. Mr. Corbin produced it.

Q. Do you know from whom Mr. Corbin got it? A. I believe it came out of the file that I produced, or gave it 2439
to Mr. Mintzer at the time I retained him.

Q. You say you gave Mr. Mintzer a file; is that right? A. I gave him some papers that I had in connection with this Hymowitz case; that is correct.

Q. Was that the file in connection with the Hymowitz case? A. It was papers in connection with the Hymowitz case, that's correct.

Q. You wouldn't call that a file? A. Well, you might call it a file, you might call it an envelope. I don't remember in just what form it was.

Q. How many papers did you give Mr. Mintzer?. A. Oh, there were quite a number of papers in there.

2440 Q. Can you tell us approximately whether there were 25 papers? A. I wouldn't be able to guess at it but there was quite a number, Mr. Schachner.

Q. Were there more than 10 papers? A. I believe so.

Q. Definitely more than 10? A. I believe so, yes, sir.

Q. Were there as many as 20 papers there? A. There may have been. I wouldn't dare guess because I believe in that file it contained the copies of the mimeographed papers that went out, the surplus papers, so there may have been a lot and there may have been a few; I don't know.

Q. But certainly more than 10? A. I believe so.

Q. Do you remember having been asked by the U. S.
2441 Attorney's office whether you had a file in that case? A. I may have been asked that question.

Q. And do you remember what you answered? A. I wouldn't remember now, Mr. Schachner.

Q. Well, let me read to you something and see whether I can refresh your recollection.

Mr. Corbin: Is this something signed by the witness?

Mr. Schachner: I am refreshing the witness's recollection.

Mr. Corbin: My point is—

2442 The Court: Do you object?

Mr. Corbin: I would like to have it marked for identification, and the right to look at it.

The Court: Do you object to the question as propounded?

Mr. Corbin: No.

The Court: Very well, gentlemen. In order to impeach a witness, you ought to know the way to do it is to ask him if on such and such a former occasion, at such a place and such a time he did not answer the following questions. So if you object

to it I will sustain the objection. If you don't, you may proceed with the question, Mr. Schachner. 244

Mr. Corbin: Well, all right; go ahead.

Q. Were you asked this question, Mr. Kandell—Mr. Spector speaking:

"I got your file and there's only these three letters, letters marked Exhibit A, Exhibit B and Exhibit C. Will you identify those as letters coming from your file?"

Were you asked that question? A. I may have been asked that question.

Q. And did you answer it: "These are articles that our office clipped out of the Daily News Record." A. I presume that's correct. 244

Q. Were you asked to initial those? A. I wouldn't remember that. If they contain my initials I would be glad to identify them.

Q. Were you asked this question: "This file is destroyed." Do you remember that? A. What is that, an answer or a question?

Q. That is a question. A. By whom?

Q. Mr. Spector. A. Is that the entire question?

Q. That is the entire question. A. Would you mind reading the prior question so I can connect the thought there and know what it was about? 244

Q. Gladly. The prior question is:

"How did you know you represented creditors?" A. I got a call from the creditors.

Q. Well, that was the question. A. Yes; and then followed up by what question?

Q. Do you remember that question? A. Well, I probably was asked that question—what was the answer to it?

The Court: Mr. Kandell, let him finish his question first so that he can propound it to you.

2446 The Witness: I am sorry.

The Court: Proceed with the question, Mr. Schachner, that you were asking him.

Q. Now do you remember being asked that question? A. Would you mind repeating that question?

Q. The question is, "How did you know you represented creditors?" A. I may have been asked that question.

Q. And do you remember this answer: "I explained that to you this morning. I looked up the credit files. The files are destroyed after the bankruptcy." A. I may have answered that, yes.

2447 Q. All right. And then do you remember the next question:

"This file is destroyed?" A. I may have been asked that.

Q. And do you remember the next answer: "Those are the only papers left, clippings put in subsequently. At times those newspaper clippings run 30 to 60 days behind." A. I may have answered along those lines, because that is the custom.

Q. And was it true at the time? A. It was.

Mr. Schachner: Will you please mark this for identification.

2448

(Marked Government's Exhibit 26 for identification.)

Q. This is the complete file that you furnished the U. S. Attorney's office? A. May I look at it?

Q. Sure (handing witness). A. It probably is.

Mr. Corbin: May I have the last few questions 2449
and answers read?

(Record read.)

Mr. Corbin: Thank you.

Q. You just answered that you furnished the file containing more than ten papers to Mr. Mintzer? A. I did.

Q. That will be all on this topic. Now you testified yesterday on direct examination by Mr. Corbin, I believe, that certain papers were sent over to you from Goldman's office. Did you mean Martin Goldman or Teddy Goldman? A. The office of Goldman, Malter & Goldman.

Q. But they sent you certain papers. What papers were 2450
those? A. There was an envelope containing a draft of a letter to be sent to creditors, a copy of a notice or request to vacate the assignment and a draft of a Bulk Sale notice and a list of creditors in the matter of Hymowitz.

Q. I show you Government's Exhibit 15 in evidence and ask you whether the drafts were drafts of these letters here (handing)? A. I believe this is the letter. This is a copy of the Bulk Sales notice, except that this notice has the name of the purchaser and their notice had no name of a purchaser, and this—I don't know just what legal document it is, but it is a request to vacate the assignment, I believe, vacating and dismissing the general 2451
assignment, and there isn't a list of creditors attached. In addition to that I received a list of verified creditors, I believe.

Q. You say the papers they sent over to you contained no listing of a purchaser on that? A. That is correct.

Q. Well, did they tell you how to fill in that blank? A. No. When I received those papers it was rather late in the afternoon, and I believe in those papers they had set a date of consummation of this bulk sale, and I believe according to law it has to be at least 10 days' notice to each and every creditor. They wanted the notices out

2452 that day in order to comply with the subsequent consummation date, and I notice there was no name of a purchaser on the Bulk Sales notice, and I called the office of Goldman, Malter & Goldman and I spoke to Theodore Goldman.

Q. Well, what did Theodore Goldman say to you? A. Well, I said to him—I called his attention to the fact that there was no name of a purchaser on there, and I asked him who the purchaser was, and he says from his understanding it's a Mr. Abramson.

I said, "Well, I'm going to call him and ask him whether or not he wants the goods bought in his name." And I called Mr. Abramson's office and he wasn't in. I
2453 called Mr. Theodore Goldman back and I said, "Mr. Abramson is not in, and if you want these out tonight you must get the name of a purchaser."

He said, "I don't know just what you could do." So I says to him, "My brother-in-law is in the office. If he won't object to the use of his name I will ask him, and if he will allow the use of his name with the understanding that upon the confirmation of the sale he is to re-transfer any rights he has under that bill of sale to the proper purchaser, whether that will be satisfactory?"

And Mr. Theodore Goldman says, "Well, you tell him the facts and if it is agreeable to him you can use him
2454 name as a dummy purchaser until the sale is consummated." And I turned to my brother-in-law who had been in the office at the time and I told him the details that I explained to you, and he said, "Well, that's agreeable; I have no objection." And I used my brother-in-law's name as the buyer.

Q. Were you asked by Mr. Spector this question: "Q. Do you know a Mr. Rothlein that is in the drygoods business that buys up all these jobs?" Do you remember that? A. I may have been asked that question; I don't remember.

Q. Do you remember whether or not you answered "No, sir"? A. I doubt if I would have answered that way, Mr. Schachner, if the name "Rothlein" was mentioned. I certainly would have recognized it. 2455

Q. You are sure, then, that you didn't answer that way? A. Well, I may have answered that there is no—that I don't know a Rothlein who buys up stocks of merchandise. I don't know of any Rothlein that buys up stocks of merchandise, because my brother-in-law is not a buyer of stocks of merchandise.

Q. The next question: "Sure about that?" and your answer, "Positive"? A. I may have answered along those lines at the time, with that in mind. 2456

Q. Did you try to fool the U. S. Attorney's office at that time? A. No, sir. If you knew the conditions under which I was laboring at that time you wouldn't think so either.

Mr. Schachner: That is all.

Redirect examination by Mr. Corbin:

Q. Mr. Kandell, may I ask what were the conditions under which you were laboring, as you say, at that time? A. If the date April 25th is correct I don't remember; but I know on the morning, in the latter part of April, 2457 at about 9:30 in the morning two men walked into the office of the Dry Goods and Furnishings Association and asked for Mr. Kandell and they asked for Mr. Cohen, and I walked over to them and I told them that I was Mr. Kandell, and I showed them Mr. Cohen, and they said, "Come on downtown."

I said, "What do you mean, Come on downtown?"

"You are wanted downtown in the D. A.'s office."

I asked them, "With reference to what?"

"We can't tell you."

I asked them for their credentials and they showed me

2458 their credentials. I asked them, "May I call up an attorney to find out what this is all about, or whether I should go with you? I don't know who you are."

"No, you are not allowed to call an attorney."

I then talked to Mr. Cohen. I says, "Well, what are we going to do?"

He says, "Well, we will have to go down with them if they don't let us call an attorney, or don't let us do anything, we will have to go downtown today."

Mr. Cohen continued for a few minutes to dictate his mail and I did not do anything, because I was so bewildered by the entire thing—it came out of a clear sky,
2459 without any warning or anything. I waited until he finished his mail, and then they accompanied us in their automobile and brought us down into this building, I believe it was, through some back entrance in a basement and they took us up—I believe it was to the sixth floor and they turned us over to Mr. Juskow.

Q. Is that the gentleman at the table here now (indicating)? A. Yes, sir.

Q. The F. B. I. man? A. That is correct. I believe so.

Q. By the way, until that occasion in April, 1938, had you heard anything about the Hymowitz matter since the year before?

2460

Mr. Schachner: I object to the question.

The Court: I will overrule the objection.

A. What do you mean, heard about it? In what way?

Q. Had you heard of any inquiry being made in respect of anything in connection with the Hymowitz matter? A. No, sir.

Q. In other words, did this visit of these two men, that they paid to you on that day, come out of the blue as far as you were concerned? A. As far as I am concerned it came out of a clear sky and just bewildered me

Q. All right. You got down here on the 6th floor with Mr. Juskow, and then what? A. Well, we were separated. Mr. Cohen was put at one side and I was put at the other side; and we still weren't told what it was all about and we were just sitting there in suspense. 2461

Mr. Walsh: I object to that, if your Honor please, as immaterial and irrelevant.

The Court: I will overrule the objection.

Q. Were you arrested? A. I don't know what I was, Mr. Corbin. I didn't find out until the end of the day. We were sitting there.

Q. What time was it that you got down here? Was it in the morning or the afternoon? A. I should imagine it was before 10 o'clock in the morning. 2462

Q. In the morning. All right. What then happened? A. Well, we sat around there for the longest period of time without anything being said or asked of us. We were separated, and then I saw some people come into the room whom I recognized. I believe a Mr. Schwartz was brought in. I think he was the only one that I recognized in there, and he was sitting in an altogether different section of the room, and subsequently Mr. Juskow called me over, and I believe he took down my personal life's history, and then fingerprinted me, and I still didn't know what it was all about, and at that particular time my wife was quite ill, and I asked for permission to call her, to find her condition, and for the longest while he said: "You can't make any telephone calls," until I finally prevailed upon him to make a call, and then in the afternoon, I believe it was, we were taken down to Mr. Spector after they supplied us with a lunch. We were taken down to Mr. Spector and there I was questioned in his office. Mr. Juskow was present. 2463

2464 Q. Well, when you left uptown and you were brought down here to this building, did these men ask you to—

Mr. Walsh: I object to that as irrelevant, if your Honor please.

The Court: Yes; I will sustain the objection.

Mr. Corbin: May I finish the question, Judge?

The Court: Well, that was sufficient for it to be determined as a leading question.

Mr. Corbin: This is a subject that was brought out on cross-examination.

The Court: No, I did not sustain it on that
2465 ground, Mr. Corbin, but upon the ground that you are leading the witness. You can ask him about any particular thing, and then ask him what happened.

Q. You had some conversation with the men uptown before you ~~came downtown~~, didn't you? A. What I related to this audience a little while ago.

Mr. Corbin: I don't know how to ask it any differently, Judge. I will have to use this inquiry to the witness:

2466 Q. Did they ask you at the time to bring along the file of the Hymowitz case? A. The men that came to the office?

Q. Yes. A. No, sir.

The Court: I will tell you how you could have asked that without being leading; you could have asked: "What was said, if anything, about the Hymowitz file?", without being leading.

Mr. Corbin: It is the same thing. All right. I will get it right, then.

Q. In the conversation that you had uptown before these

two men asked you to accompany them downtown, and while they were in your office, what was said with reference to the file in the Hymowitz case? A. Nothing. 2467

Q. And at that time did they say or did they not ask you to bring any papers of any kind in respect to the Hymowitz case? A. No, sir.

Q. Was the Hymowitz case mentioned at all? A. No, sir.

Mr. Corbin: May I see the paper from which counsel read those questions and answers to the witness?

Mr. Schachner: Your Honor, I object to that.

The Court: I will sustain the objection.

Mr. Corbin: Well, I ask that that paper be marked for identification that counsel read from. 2468

Mr. Schachner: I object to that.

The Court: I will deny the request.

Mr. Corbin: Judge, they read here in open court—

The Court: Mr. Corbin, until they offer it, and unless they offer it, the only way to impeach a witness is to ask him if on a certain occasion and at a certain time he did not testify differently to what he says now. If he says "Yes" that ends the whole thing. If he says "No" then the opposite side can introduce that or introduce witnesses to contradict it, but that paper is not competent unless it is proven by some witness that he testified differently on that occasion. 2469

Mr. Corbin: I am not claiming that it is competent; I am claiming the right to inspect it.

The Court: Well, I will rule that you are not entitled to inspect it, and I will give you an exception.

Mr. Corbin: Even if it were the grand jury minutes, as in the Socony-Vacuum case.

The Court: You can state the ground of your

2470 objection for the record, but I will adhere to my ruling.

Mr. Corbin: I think the record is clear now that counsel read from a paper certain questions and purported answers. It is that paper which I ask leave to look at and which I have asked to be marked for identification; and I claim as a matter of right, and I ask also separately as a matter of discretion, the opportunity to look at that paper in order to determine whether or not in the questions and answers, and in the contents of the paper there are other questions, and answers, the con-
2471 text of which bears upon the questions and answers read to the witness?

The Court: I deny the request, and hold that if you want to ask this witness any questions on the stand in explanation of anything that was brought out by the cross examination you may do so, but that you are not entitled to the custody of the paper or to have it marked for identification.

Mr. Corbin: And I respectfully except.

Q. Were you furnished with a copy of the questions and answers that were put to you down there that day?
2472 A. No. I was asked for it and was told that I wasn't entitled to a copy.

Q. That is confidential government stuff? A. I don't know what they said to me, but they said I wasn't entitled to a copy.

Mr. Walsh: I object to the characterization, if your Honor please.

The Court: I will overrule the objection.

Mr. Walsh: That it is the stuff of the government. It is not?

The Court: I will overrule the objection.

The Witness: I won't say they said that, but 2473
they told me I wasn't entitled to a copy.

Q. Whether what you said on that occasion was recorded accurately you don't know, do you? A. I wouldn't know, no, sir. I never saw it.

Q. You had no counsel present when these questions were being asked of you? A. I was told I wasn't entitled to counsel.

Q. And did you sign the paper? A. I don't remember signing it.

Q. Did you ever sign—was the paper or any paper ever presented to you for signature or presented to you 2474
for reading at any time? A. I don't remember that.

Q. You don't recall ever having had it presented to you to go over and correct even? A. I don't recall that.

Q. Well now, on that occasion and as a part of the circumstances that you referred to on cross examination, were you shown a paper of which this is a copy, which I show you (handing)? A. No, sir. I was never shown this paper.

Q. You say you were fingerprinted that day? A. By Mr. Juskow.

Q. At the time that you were fingerprinted did you know what you were there for? A. No, sir. 2475

Q. And then later there was a talk about a bond, a bail bond, was there not? A. That was at the end of the questioning and so forth that took place during the day. That must have been around 3.15 or so in the afternoon.

Q. And at that time you realized that you were under arrest, didn't you? A. Well, I would presume that I was under arrest if they asked for a bail.

Q. And the bail was fixed at how much? A. I was brought down into the basement of this building. I believe, before—they said they were going to take me before a Commissioner, and I believe the bail was $500.

2476 Q. At that time Mr. Juskow made a complaint upon which you were held, is that right? A. Well, I subsequently learned that.

Mr. Walsh: If your Honor pleases, I object to "at that time". If he will specify the date, if that is the complaint, I would like the date in the record right now rather than "some time". It is too indefinite.

The Court: I will let you bring it out on recross if it is not brought out. I will overrule the objection.

2477 Mr. Corbin: The arraignment and the bail was fixed, according to this copy, on April 25, 1938.

Mr. Walsh: Was there a warrant attached to that, sir?

When was the warrant issued?

Mr. Corbin: Just a complaint.

Mr. Walsh: What is that paper in the back?

Mr. Corbin: That is a commitment. Do you have the file here?

Mr. Walsh: Which one?

Mr. Corbin: The file in this present case.

Mr. Walsh: What do you want, Mr. Corbin?

2478 Mr. Corbin: I want the original of the commitment of the witness on that day.

Mr. Walsh: If it is a court record—

Mr. Corbin: And the complaint made by Mr. Juskow on which he was held,

Mr. Walsh: If your Honor pleases, if Mr. Corbin will say that this is a copy, and that this is a copy of the commitment, that is a court record here and I have no objection if he uses this until such time as we get the other.

The Court: Very well.

Mr. Corbin: I offer this in evidence.

(Marked Defendants' Exhibit G.) 2479

Mr. Corbin: (To the jury): Ladies and gentlemen, this commitment—

Mr. Walsh: If your Honor please, is this proper? This is no defendant at the present time, and I object to it as immaterial and irrelevant at this time regardless of the complaint. That has no relevance to the matter of the innocence or guilt of the defendants now on trial, and I think it is just wasting time.

The Court: I will overrule the objection. It goes to the circumstances under which these statements were made before the F. B. I. agent. I think that is proper. I will overrule the objection. 2480

Mr. Corbin: Ladies and gentlemen, this paper is the commitment of Samuel Kandell made by Mr. Cotter, United States Commissioner, dated 4/25/38, a certificate that he having been given bail that he be released from custody, bail having been fixed at $500; and attached to it a paper by Mr. Juskow, together with the record of the proceeding, and endorsed on the back, on a separate page, by the United States Marshal.

For the moment let me call your attention to the fact that Mr. Juskow swears that— 2481

Mr. Walsh: If your Honor please, if he wants to read the exhibit let him rather than explain and call anything to their attention, to this part or that part. I think that is the proper procedure.

The Court: I think if he wants to call attention to a particular part, he may. I will overrule the objection.

Mr Walsh: Yes, without comment. I have no objection, but without comment.

The Court: Yes, without comment. But if he

2482 wants to call attention to such and such a part, I will allow him to do that.

Mr. Walsh: I don't object to that. I merely object to the side comments.

The Court: Very well, Mr. Corbin, read the whole paper and then in your argument to the jury you may read that part which you desire.

Mr. Corbin: Mr. Juskow swears—(reading to the jury).

And then the notations indicate that separate warrants to apprehend were issued against Samuel Kandell, Phillip Cohen, Aaron Kreiselman, Sam
2483 Ribach, and Abraham Schwartz; and the notation that Kandell waives examination and will await action of the grand jury; bail, $500, dated, New York, April 25, 1938, and it is signed by Mr. Cotter, Commissioner. With reference to Cohen, dismissed on motion of Spector—that was the district attorney—and then the notation says—(reading to jury).

Q. So you were held to await the action of the grand jury in April, 1938?

2484 The Court: I sustain the objection for the reason that it has already been shown.

Q. Did you hear anything more about that matter until this present year 1940?

Mr. Walsh: I object to that, if your Honor please.

The Court: I will overrule the objection.

A. I was some time after that date, I believe, or it may have been within a period of 30 days or so, called into Mr. Spector's office again, and at that time he gave me a

lecture on behavior and he told me that he was going to 2485
appear again before the—

Mr. Walsh: I object to that as incompetent

The Court: Yes. I sustain the objection.

Mr. Walsh: Let us get on to something important.

Mr. Corbin: What.

Mr. Walsh: Your Honor, I would like to get on to something important.

The Court: Very well. I will sustain the objection. Proceed, Mr. Corbin.

Q. And you were discharged, were you not, from that bail? 2486
A. I subsequently was discharged, yes, sir.

Q. And did you hear anything more from the Hymowitz matter, or anything connected with it, from any official source until January or February, 1940, two years later? A. No; at which time I noticed that an indictment had been handed down.

Mr. Walsh: If your Honor please, I object to that as not responsive and ask that it be stricken.

The Court: I will overrule the motion.

Q. You did not hear anything about any indictment from the first grand jury, did you? 2487

The Court: I will sustain the objection.

We will finish with this witness before I recess. You may proceed.

Q. Now, you were read certain questions and answers from a paper that I cannot read to you from now, but I took a few pencilled notes, and from them I call your attention to something contained in the paper as read, to the effect that you said that you had produced the file of the Hymowitz case from your office. Was something like

2488 that said to you by Spector? A. Well, I didn't produce—if I remember correctly, Mr. Spector asked me to call my office and at first he asked me whether Mr. Cohen could go up to bring down the file, and I said "Yes." "Well," he said, "I might facilitate that if you have anybody in the office that could bring that down." I said I would have to call the young lady up and ask her to bring it down some time, "whenever you want it." And he said that is all right, and I called the young lady and asked her to bring the file down, that's correct.

Q. And what was marked here for identification is what she brought down, is that right? A. If I remember correctly,
2489 those three sheets of paper were brought down by her.

Q. Well, did you say that these three papers were the only papers that you had in your possession or in your office with reference to the Hymowitz matter in any connection? A. Well, I would have to explain that, Mr. Corbin. Those were the only papers that were in the credit file. You see, we have a credit file in which we keep a record of retailers and their behavior for which we render reports or opinions to creditors or subscribers, and in addition to that we have a file wherein we keep—matters, that is items referred to us for collection against debtors, and that was all she picked out of the credit file and brought down with her.

2490 Q. Well, did you talk with her in their presence? A. From Mr. Spector's office, yes.

Q. Did you tell her "Don't bring anything except some newspaper clippings"; or anything to that effect? A. Oh, no, sir. I asked her to bring the file down in the Hymowitz matter.

Q. And you had no other previous communication with her? A. Oh no.

Q. So that pursuant to the telephone call made in the presence of the district attorney, his office there, the girl brought this down to court? A. That's correct.

Q. Now what I want to find out is this: Did you tell— 2491
had you seen the file at any time from the year before when the matter was on? A. The last time I probably saw that file, that is the collection file I am referring to now—

Q. Yes. A. —was in December, I believe, when the matter was terminated—that is, the assignment proceedings—and I probably put it amongst the closed files after it was terminated, which is customary.

Q. What I am trying to find out is whether you represented to the district attorney that these three newspaper clippings were all the papers that you had or that were in your office in connection with—in any way with the Hymowitz matter? A. I don't think that would have been my 2492
intentional answer, Mr. Corbin.

Q. Well, of course I can't see the paper so I cannot tell what else is in there, but do you or do you not recall the entire conversation that you had with those men in the office there, in the building here? A. Oh, I wouldn't dare to recall it, because the condition I was in—I wouldn't try it.

Q. Whether that paper would refresh your recollection as to what you may have said or may not have said—what you may have been asked about or may not have been asked about, you cannot tell without looking? A. I wouldn't say without looking at it, no, sir. 2493

Mr. Corbin: I make a request now, Judge—

The Court: It isn't necessary to make another request. I have already ruled, and I adhere to my ruling.

Mr. Corbin: For the purpose of refreshing the witness's recollection.

The Court: I adhere to my ruling. Proceed with the examination.

Mr. Corbin: Exception.

Q. Now, this sole subject arose over this Exhibit F, which

2494 I show you again (handing). You remember I asked you to look at it on direct examination, don't you? A. Yes, sir.

Q. That was not among the papers that the girl brought down from the office when you telephoned her the day of your arrest, was it? A. No, sir.

Q. Well, what do you say now? Did you write that out afterward, make evidence in this case? A. No, sir. This is the minutes of the meeting originally conducted in my office on March 25, 1937.

Q. Is it or is it not the fact that wherever it was, on the day of your arrest, a couple of years ago, what is the fact as to whether or not it is and was then and still is the
2495 original memorandum that you made on the 25th day of March, 1937? A. There is no question but what it is the original.

Q. Was Mr. Cohen present at that meeting on March 25th? A. No, sir, other than the fact that he may have come in and out of the room, to deliver telephone messages or ask me any questions. He did not partake in the meeting.

Q. Yes, but was he in and around that office that day? A. Oh yes, he was in the office on March 25th, surely.

Q. And how does it happen that there is some of that
2496 paper in his handwriting? A. I will have to explain to you again that the following day, that is March 26th, I was leaving with my family for the Easter vacation.

Q. You told us that. A. And I left this with Mr. Cohen and I told him that these are the appointed hours at which the various creditors were going to take a look at the stock, that he should please, on Monday morning—

The Court: That has been gone into yesterday. Can't we shorten this just a little bit.

Mr. Corbin: They put all this stuff in, Judge, to contradict that this is a bona fide paper.

Mr. Walsh: We never claimed that this wasn't a

bona fide paper, if your Honor please. Our contention was that we asked him to produce the file and he produced three newspaper clippings, and then this shows up at the trial for the first time. That is our contention. 2497

The Court: Very well. Let us save time.

Q. Is this a bona fide paper that was prepared at the time, or was this something trumped up later? A. This is unquestionably the original paper of March 25, 1937, made by me and later, subsequently additional writings were put in by Mr. Cohen.

Q. And whether or not the girl brought it down there that day, that still remains the fact; is that true? A. Yes, sir. 2498

Mr. Corbin: That is all.

Mr. Walsh: Four questions, if your Honor pleases.

Recross examination by Mr. Walsh:

Q. When your girl brought you the file down did you tell Mr. Spector that was the whole file after you looked it over?

Mr. Corbin: I object.

The Court: I will overrule the objection.

Mr. Corbin: Exception. 2499

Q. Did you? A. I may have said that was the file.

Q. You may have? A. Yes, sir.

Q. And you were very excited that day? A. That's correct.

Q. Did you know that a warrant had been out for your arrest two days before you were arrested? A. No, sir.

Q. You don't deny it, though, do you? A. How could I deny it when I don't know it?

Mr. Walsh: What is that last exhibit that you had there?

(Handed to Mr. Walsh by Mr. Corbin.)

2500 Mr. Walsh: Will you concede that Defendant's Exhibit G, the warrant was issued on the 23rd day of April, 1938?

Mr. Corbin: I don't need to concede anything that is there. I notice—

Mr. Walsh: Well, just to save time, Mr. Corbin.

Mr. Corbin: I notice the complaint is verified on the 23rd—Juskow's complaint.

Mr. Walsh: That is correct.

Mr. Corbin: Does it say that the warrant was issued on the same day?

Mr. Walsh: The same day.

2501 Mr. Corbin: That doesn't mean that he knew about it. What difference does it make?

Q. Well, when you were arrested they exhibited to you a warrant for your arrest and told you they had the warrant with them, didn't they? A. No, sir.

Q. You are absolutely sure of that? A. Positive. I asked them what it was all about and they said, "You are wanted downtown."

Q. And so then you were brought before Mr. Spector? A. Originally before Mr. Juskow.

Q. Well, after Mr. Juskow then you were brought down
2502 to see Mr. Spector, is that right? A. With Mr. Juskow, yes.

Q. And before he asked you any questions he warned you of your constitutional rights, that you needn't make any answers, didn't he? A. He told me I didn't need to answer if I feel I don't want to.

Q. There is no question of that? A. No; that is correct.

Q. Were you so bewildered and so excited on that day that you did not even know the name of your brother-in-law? A. I don't know what I could have done on that occasion—

Mr. Walsh: That is all.

A. (Continued) Mr. Walsh, it was the first time in my

life I was ever apprehended in any matter whatsoever. 2503

Q. And what time were you apprehended? A. At about 9.30 or 10 in the morning.

Q. And what time were you questioned? A. Oh, I should imagine it was after lunch, the first time.

Q. Didn't you say on direct about 3.15? A. I said we ended about 3.15.

Q. Well, you were questioned about— A. Up until about 3.15, yes, through the afternoon.

Q. So from 9 o'clock until 3.15 in the afternoon you continued to be so excited you did not know what you were saying? A. Well, anybody in the condition that I was, sitting in a room without knowing what it is all about, without being told, being fingerprinted and a life history given, would have gotten excited at any occasion. 2504

Q. Didn't you just tell the jury that Mr. Cohen was telling the telephone conversations that had been related to your office—relayed to your office? A. Oh, that was at the meeting. He walked in and out of the room. That was that question.

Q. Well, was he up at the office that day? A. At what office?

Q. The U. S. Attorney's office, Mr. Spector's office. A. He was brought down with me.

Q. Was he excited, too? A. I couldn't see. We sat at the other end of the room. We weren't even allowed to discuss anything together. 2505

Q. But you were so excited you did not even know the name of your own brother-in-law? A. I may not have recalled the question or the meaning of the question.

Mr. Walsh: O. K.

The Court: Is there anything further?

Mr. Walsh: No.

The Court: Anything further, Mr. Corbin?

Mr. Corbin: No, your Honor.

2506 The Court: Very well. You may be excused.

(Witness excused.)

The Court: I will recess this case for 20 minutes. Come back at 11.20.

(Short recess.)

MARTIN M. GOLDMAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Corbin:

Q. Mr. Goldman, you are a lawyer? A. Yes, sir.

2507 Q. Practicing where? A. New York County, 302 Broadway.

Q. And living where? A. 765 Eastern Parkway, Brooklyn.

Q. With your wife and family? A. Yes, sir.

Q. Consisting of what members? A. I have a boy that is 21 years of age and another boy 16.

Q. And your wife is here? A. Yes, sir.

Q. And your boys are in college? A. One in college, one in high school. They are now up-state.

Q. I would like to introduce you to his Honor and the jury in this additional respect: Are you a member of any Bar Association, and if so, what? A. Yes, sir.

2508 Q. What? A. Brooklyn Bar Association, New York County Lawyers, New York State Bar Association, American Bar Association, a lawyers' club over in Brooklyn and the Commercial Law League of America—I think that is considered a lawyers' group.

Q. And are you serving or have you served on any committees, and if so, what? A. Corporate Reorganization of the Brooklyn Bar Association. I am a member of the Bankruptcy Committee. I am a member of the board of directors of the Lawyers' Club of Brooklyn. I might add another group of lawyers, the National Bankruptcy Conference, of which I am an advisory member.

Q. Is that the Conference that formulated Federal legis- 2509
lation? A. Yes, sir, that was a conference that brought about the Hastings-Hatch Bill, and ultimately resulted in what is known as the Chandler Act.

Q. Mr. Goldman, you have heard the name of your firm mentioned here as Goldman, Malter & Goldman? A. Yes, sir.

Q. What is the general nature of the business conducted by that firm? A. Well, I would say that we have a general and varying practice. We have, I should judge, every type of matter that you could possibly imagine, has been handled in our office with the exception probably of patent litigation and admiralty. 2510

Q. And you have had some bankruptcy work? A. Oh, yes, sir, a considerable amount.

Q. Are you ashamed of the fact that you handle bankruptcy matters?

Mr. Walsh: I object to the form of the question.

The Court: I will overrule the objection.

A. I would not be as active as I am in the various Bar Association groups if I were.

Mr. Walsh: That is objected to, your Honor.

The Court: Motion sustained. 2511

The Witness: I say I am not.

Q. Can you give us an idea of what percentage of your practice is in that line? A. Well, I tabulated some figures for Mr. Schachner when I appeared before the last grand jury and gave him a list of the insolvency cases.

Mr. Walsh: I object to that and ask that it be stricken out as not responsive.

The Court: Well, it is not as responsive as it might be but I will let it stand and overrule your objection.

2512 The Witness: Out of 1600 cases in a period of years, from 1937 to 1939, inclusive, there were about 90 cases of court proceedings consisting of about—this may be one or two up or down—that I gave Mr. Schachner. About 20 cases in which we were attorneys for creditors and filed involuntary petitions in bankruptcy. We were attorneys either for a receiver or a trustee or some member of the firm acted as a trustee, but I say 20, approximately 20, where we filed involuntary petitions in bankruptcy. This is in the period where we appeared—I said that first. We were appearing as attorney for the receiver or
2513 trustee or some member of the firm acted as trustee, and was elected by the creditors. About ten cases in which we appeared as attorney for bankrupts and about ten cases in which we appeared in corporate reorganizations under 77B or Chapter 11 or Chapter 10, which was formerly 77B.

Q. And what is the balance of the insolvency matters? A. Then there were assignments, about 28 or 30, assignments for the benefit of creditors in which either we were attorneys for the assignee or some member of the firm acted as assignee. I think that accounts for 90 cases.

2514 Mr. Corbin: I think so.

Mr. Walsh: 70.

The Witness: I beg your pardon.

Mr. Corbin: Mr. Walsh apparently has a pencil memorandum of the figures.

The Witness: I have a memorandum in my pocket. I think this will help me better. That accounts for 90. Well, 20 involuntary petitions, 20 appearing as attorney for the receiver, 10 as attorney for the bankrupt, 10 for reorganization proceedings, that is 60. And about 30 cases of assignments.

Mr. Walsh: I beg your pardon. I didn't have the 20 cases that you acted in as attorney for the receiver or trustee. 2515

Q. These are actual proceedings? A. Yes, sir, in the files in the office during that three-year period.

Q. So the percentage is what? A. About 6 per cent, and maybe slightly less.

Q. You handle all types of work I think you have already indicated? A. Yes, sir.

Q. Have you been appointed by judges around here and in Brooklyn in proceedings? A. I have.

Q. Surrogates' Court? 2516

Mr. Walsh: I object to this.

The Witness: You don't have to lead me.

The Court: I will overrule the objection to that. He is entitled to go into it at reasonable length.

A. I have been appointed by a surrogate in this county, by Supreme Court judges in this county. I have been appointed by Supreme Court judges in Kings County.

Q. As what? A. I was appointed by the Surrogates' Court as special guardian in accounting proceedings.

Q. Substantial matters or in little matters? A. In one case I received a fee of $3500 and a lawyer knows that is a substantial appointment. As referee by a Supreme Court judge and I was appointed by the Surrogate where the fee ran to $3000. 2517

Q. Judge Foley? A. That is correct.

Q. You served as special referee and guardian by appointment of various judges in various courts? A. As late as ten days or two weeks ago I was appointed by the Supreme Court in Brooklyn and that appeared on the front page of the Law Journal.

Q. What we want to know is in general, just give us in

2518 round figures the gross of your practice, say, during the years 1936, 1937 and 1938. A. I tabulated those figures for Mr. Schachner too. I think the approximate figures are around—I think our average gross fees, subsequent to 1936 ran about 30,000 or $40,000. And I think in 1936 they ran close to $50,000. The expenses in the office ran from half to a third of the total gross of the income.

Q. What kind of personnel did you have? A. In what year?

Q. 1937. A. Well, I think we had about four or five stenographers. We had three law clerks, a managing attorney or managing clerk, depending upon the particular
2519 type. I think we had one or two lawyers working for us in addition to the members of the firm. If my memory serves me well, I think we ran from 13 to 15, including the members of the firm. That was not consistent. That depended upon the bulge of activity on particular matters, and the seasons of the year.

Q. Your office personnel varied, did it? A. Yes, sir.

Q. There was one witness here by the name of Harry Levy. Do you recall him? A. Yes, sir.

Q. Has he been a client of yours for some years? A. He has been a client of the office for quite a number of years.

Q. For some years prior to 1937 who attended to collec-
2520 tions and other matters that Mr. Levy had? A. My brother, Teddy.

Q. Did you ever talk with your brother Teddy with reference to Mr. Cohen at some time in 1937? A. Mr. Cohen?

Q. Mr. Levy, rather. A. I talked to my brother about Harry Levy in connection with this case.

Q. When was that? A. The first time I talked to him was on the evening of March 24 of 1937.

Q. And what was the talk? A. He had told me that Levy had called him in connection with a matter, giving me the name of the matter, the address, the location, and giving

me some details of which I made a pencil notation. I might have committed it to memory, in which he told me the assets and liabilities— 2521

The Court: Will you talk louder, please.

A. In which he told me the assets and liabilities, the facts surrounding the case, the fact that there was an assignment made, that there was no meeting of creditors heretofore held, that the client was quite disturbed about the fact—it appears that the assignee and the assignee's attorney were non-representative of creditors and were representatives of the debtor, and where the case was in the debtor's control. 2522
And he also told me that Harry Levy had pointed out to him that the New York Men's Credit Association, of which he was a member, would not tolerate that, that he didn't want to permit that thing to go on, that he knew its attitude about assignments from years of contact, and he asked me whether I would go to a meeting of creditors in the case that was to take place on the following day, I think about 4 or 4:30. He said he was not able to take care of the matter, and asked me to cover it for him, which I said I would.

Q. That is because he had some other appointment? A. That is right. 2523

Q. And you agreed to attend the meeting? A. Yes, sir.

Q. And he gave you generally the facts that you have indicated? A. Yes, sir.

Q. Did you go to the meeting on the afternoon of March 25? A. I did.

Q. Tell his Honor and the jury as briefly as possible what occurred there. A. The meeting was a little delayed, as usual, waiting for people to come in, and I suppose I ought to tell you who was in attendance.

Q. As briefly as possible. Give us the high spots. A. The three creditors whose names have been mentioned and

2524 who were the petitioning creditors, or some one of the firm were present. I have no definite impression or recollection of the individuals that were there. I know their firms were represented there. Mr. Hoffman, Mr. Wishbow, Mr. Kandell and Mr. Cohen, and then I believe there was a Goldstein, I had forgotten about him. He was a representative of the Credit Agency of America, an association that represented haberdashery creditors. And then there were some others there. It seems as though in the period of time everybody has lost track of some of them. It seems there is a forgotten group. I know definitely that some others were present and apparently it is only lately that has come to
2525 the surface, that the question has come to the surface at this trial. I had forgotten about him.

Q. Tell us what occurred and let us get along. Please make it brief. A. Hoffman was called upon by Mr. Kandell to tell about the facts of the situation, which he did in substance as he testified, or others testified, of what the elements were contained in the letter that he sent out on March 24, the letter about the liabilities being $2500 and about the inventory of stock and fixtures being worth between 2200 and $2500. That there were some relief tickets allegedly in the possession of the assignee of about $250, and then some claims supposedly outstanding against the
2526 City of New York in the sum of about $200.

After giving that phase of the story he told about the circumstances surrounding the case, the fact that his client was incarcerated, that he had not represented the client in connection with his incarceration, but that he was representing him in connection with this matter, and he wanted to do everything he could for Paul Hymowitz and wanted the creditors' good will. He was particularly concerned about getting the creditors' good will, because he said, "When Hymowitz comes out of jail, he wants to have their good will for him."

He then went along in that vein. The creditors at first criticised him. I don't know particularly, but this is the tenor of what took place. Criticised him first for having had an assignment filed. They pointed out to him that if he were so concerned about the good will of creditors and so concerned about the reaction against Hymowitz, that the appropriate and proper thing to have done was to call the creditors together. It was a small matter. Creditors are always willing to cooperate in cases involving circumstances where a man is taken away from his business, and generally creditors are always willing to go along, to try to work something out. It is the feasible thing to do, and what should have been done if the creditors had been called together, attempted to keep the debtor, either through some representative of the family, in business, or to give him an extension of his debts and make some adjustment along that line, or have had an opportunity to get somebody in to buy the stock and get the best price they could and give the creditors the greatest distribution that could be made in those circumstances with a minimum of expense; and they told Mr. Hoffman and Mr. Wishbow that was their practice, and that was always what they wanted to do. Of course they criticised him for having incurred auctioneer's expenses and they particularly made a point of the fact— 2527 2528 2529

Mr. Walsh: Who is "they"? Is this the general tenor of the remarks?

The Witness: A lot of various individuals. It may have been Mr. Schwartz or Mr. Kreiselman or Goldstein, it may have been Mr. Kandell, it may have been myself. I am just giving you the substance of it. It is physically impossible, it is wholly illogical for me to remember who made a particular comment. I only know in general what took place and I repeated it before the grand jury in 1938 and I told it to this grand jury—.

2530 Mr. Walsh: I object to these side remarks.

The Court: Yes. Give us the testimony as to what you recall happened, which you were going to particularly point out.

The Witness: The creditors particularly pointed out to him that it indicated his bad faith and that this alleged good will on the part of the creditors was a fact on the very day, March 24th, the very day the assignment was filed, an order of sale had been obtained, a notice of sale had gone out over a short period, that the assets were to be sold, namely, ten days, and the sale had been scheduled for April 5th.

2531 It seems to me, why, all the rush, and why the attorney could have gone forward as quickly as he did with obtaining an order as rapidly as he did, that he had to physically wait at the Judge's chambers to get an order through, when the usual mechanics—

Mr. Walsh: Was this Schwartz?

The Witness: No, this may be Goldman talking Kandell, it may have been Mr. Goldstein or it may have been one of the other creditors. I don't purport to convey in the language I am using that it was the language that was used at this meeting by any manner of means.

2532 Q. Well, this had been done without any notice to the creditors? A. That is correct. And then when that thing had subsided, after this pro and con or, rather, this talk of the justification and the complaints and criticisms et cetera, the thing finally simmered down to what should be done, and with these fellows having taken the original position, if an assignment was not made they would have handled the case anyway, first having the place open for inspection, and each one attempting to get a buyer for the merchandise, and in general that was their attitude. They then went on and said, "This is what we want. We don't

want an assignment, because in that case we will have to wait for our money for a year and we will wind up with no dividend." Hoffman was endeavoring to demonstrate to them that they could get a substantial dividend in the assignment. Someone took that letter and said, "You say nearly 100 cents is payable." It didn't take very long for Mr. Hoffman and Mr. Wishbow—I don't know that Mr. Wishbow had any part in that, but that was so far-fetched they dropped it. They had no further argument or discussion about that. It was so far-fetched. 253

Q. Was there a theory about the assets? A. Yes, sir, in this respect: The creditors—you say $2500? Now we know that the stock will bring only 60 cents on the dollar in an auction sale, such as you are about to conduct, that is the gross figure, and after deducting auctioneer's expenses, advertising, lotting and the auctioneer's charge of 10 per cent, that is gross, 40 to 60 per cent, it is our understanding with that starting point, with the relief tickets and the claim of the city would be contested by the city at best, because of the involvement of Hymowitz in that situation, that they could not hope ever to get any dividend as near 100 cents on the dollar, that was dropped very rapidly, so rapidly that you could not tell that it had been discussed. It was never brought up thereafter, and it was not discussed further. 253

I think the discussion was then had—he said something, Mr. Hoffman, about there being money loan claims in the case, and the creditors called his attention to the fact that there was no mention of additional liabilities in the letter, that the letter only said $2500. He said, "There are money loan claims." They said, "You will have to prove it. Have you books and records to substantiate it?" He said, "These are the claims that were told to me by relatives," some brother of Hymowitz, and he said that was told to him and it was claimed they were in a position to substantiate them. 253

2536 He said, "You know that I could have these claims allowed here. I can permit them to be allowed in the assignment proceedings." And then the thing went on to the question of settling the case.

He said—well, he would waive the claim if that would satisfy the creditors. Well, he said something about the fact of not doing us a favor. I remember that particular expression, "those claims are no good anyhow"—

Mr. Walsh: Will you please keep your voice up?

A. (Continued) That is the usual claim made by debtors'
2537 attorneys, that there are money loan claims and also seems to be a sort of bait to the creditors to conduct them the way the debtor or the debtor's attorney wants to conduct them.

The thing was not getting anywhere. There was some confusion and people were getting off the track, going off on a tangent, until Hoffman finally said he would go along with it, yet he was not definitely committed on having the stock looked at by prospective buyers sent by the creditors, and in one particular instance, in order to obtain a satisfactory number and convey the assignment and dispose of the matter over the year it usually takes, and at that
2538 point Mr. Goldstein or somebody else asked him to step out, and he had been out a few minutes, and the creditors talking among themselves said something about the fact that he had not yet made an investigation in the case. Some person, other than these three, and when I say Goldstein, I have no recollection that it was Goldstein, but I use his name because somebody other than those three said it, that no accountant had gone over the records, and it was pointed out that there were no records, and it was asked whether anybody knew of irregularities, financial statements in the case, et cetera.

There was no discussion on that. It seemed to be the

consensus of view that the matter was a small one, and the 2539
incurring of any expense for an accountant would be useless and it would not serve any particular purpose because of the liabilities, the merchandise creditors, as it appeared, were about $1900 or $2000.

It developed that these $2500 liabilities comprised about $1900 or $2,000 of merchandise, and a $200 claim of the National City Bank, who had co-makers on the loan and the rent claim and maybe some small incidental claims like gas, electricity, incidentals, but the total I think was about five or six hundred dollars.

Mr. Hoffman left with Mr. Wishbow and stayed outside a little while. Then somebody said, "Well," they said to 2540
me, directing my attention to the fact that "you are a lawyer; Mr. Hoffman is a lawyer; go out and see if you cannot get him to use his aid, and straighten this thing out."

Mr. Walsh: Can I get who told you that?

The Witness: I said somebody in the room. I have no definite recollection who it was.

While he was in that room and while the creditors were arguing with him, it occurred to me that one of the obvious arguments that would appeal to the debtor was what the creditors wanted, namely, that if he would go along with the proposition, as outlined by 2541
the creditors, his client would derive a definite and specific benefit by that consummation of the matter in that way; because under their plan each creditor would be permitted to give him a consent, a release, a discharge, of any claim in excess of the amount they would receive under this plan. And when they said to me, it occurred to me it would be a good opportunity to send them out into the street, because an attorney may not know the subject, and might be somewhat sensitive about another attorney point-

2542 ing out to him something that you may believe he does not know in the presence of laymen.

Q. If you told him that in the presence of another lawyer it would not have the same effect? A. Well, at any rate I was motivated or catapaulted to go outside. It was a perfectly agreeable task. I had spent some time there; it had been going on for about three-quarters of an hour or so, and by then I wanted to get away. The matter was getting into a hubbub, and we wanted to get away.

Mr. Walsh: Make it brief.

2543 Q. You went outside? A. Yes, sir. The first thing I pointed out to Mr. Hoffman was the fact, I described the fact outside of the advantage to his debtor, to his client, in the plan as outlined by the creditors that he would get a release under that plan, whereas under the assignment he would get no release at all, because under the assignment there is no discharge of the balance of liabilities, and Mr. Hoffman told me he knew that; and then he said to me, "Where do I come off? Here I have a case, Kolman is the assignee; I am the attorney for the assignee, and surely you won't oust an attorney from a case. Say I lost the matter I would lose the fee involved."

2544 I said, "You are not going to lose any fee." I said, "The creditors," I said, "will work out this case as in every case, whether before an assignment is executed and filed or after executed or filed, or in any proceeding creditors know they must recognize the fact that there are items that have got to be paid in full, that there has to be a fund for administration expenses and the priority claims, and then there is to be a fund for general creditors."

Well, after some talk there that seemed to satisfy them and we went back to the creditors' meeting, and he didn't yet seem to be in full accord with that, and the creditors talked some more.

Q. In regard to what? A. The plan. 2545

Q. What was the plan? A. The creditors had wanted that this stock be inspected, that each one of them have an opportunity to look at the stock, that they be afforded an opportunity to try to interest as many people as they possibly could in obtaining a buyer who would pay the highest figure for the assets, and that the assignment be disposed of, vacated, and that the creditors take the pro rata amount that would be determined at a later period when the creditors and Mr. Hoffman got together, after they determine the amount that the stock would bring.

I wanted to add this before. I finished the discussion as to what took place. 2546

When he came back and was still adamant about going along—I would not say adamant then, but originally—but sort of being on the borderline of whether to go along with it or not,—he again endeavored to urge the creditors that they could get more under the assignment than any other way; that expenses had been incurred and that the sale should take place, and that any delay would cause additional expenses and the like. And the creditors said at one point—at some other point—that they would get very little out of the case, and then finally, after some talk, he finally agreed to go along with that.

Q. That was after you came back? A. That is correct. 2547

Q. Can you tell us very briefly what he said he would do? A. He said he would open the store.

Mr. Corbin: Your Honor, Mr. Walsh is laughing audibly.

Mr. Walsh: I laughed at the remark made "very briefly", because he asked the witness to tell the last story briefly.

The Court: Of course any laughs, signs or indications, remarks, anything, made by counsel—on either side, as far as that is concerned—are to be dis-

2548 regarded. It is the duty of counsel to ask proper questions.

Mr. Walsh: I would like to apologize at this time, your Honor. I didn't mean anything by it.

The Court: That is all right, Mr. Walsh.

Q. Will you tell us briefly what occurred, what Hoffman refused to do after the return to the meeting of the creditors? A. The upshot of that meant to us Hoffman agreed to open up the store a few days later, and the store was to be open during the entire day, or at various hours during that day.

2549 Q. He was to open the store for prospective buyers' inspection? A. That is right.

Q. What next? A. And after those prospective purchasers had had an opportunity to look at the place he was to get together with the creditors and determine the highest price that they could get. That was satisfactory to him and to his auctioneer, and then dispose of the matter by vacating the assignment and selling the assets, and by notice to all of the creditors.

Q. Something has been said there about creditors not amounting to much. Can you give us some figures as to the amount of claims represented at the meeting? A. Well, 2550 our client, Harry Levy; his claim was about $260-odd, but the three petitioning creditors, I think their claims were around $350 or $360. Butler Bros. claim I heard testified here was about four hundred and some odd dollars. Mr. Goldstein, I don't know what he represented, but a hundred or two hundred dollars—I don't know what amount it may have been; and then there were some others. But my definite impression is that this particular group maybe there was a representation of anywhere between a half and two-thirds of the merchandise creditors. That was the impression I had obtained on that day.

Q. Mr. Hoffman has testified about conferences that he had with you and Mr. Wishbow. By the way, was Wishbow present when this talk took place? A. Outside? 2551

Q. Outside. A. Yes, sir.

Q. Did Mr. Hoffman say to you out there in words or substance, or did you say to him, rather, that you could arrange for a private sale, that the buyer would be obtained either by you or Mr. Kandell, and that you with the help of Kandell would try to make an arrangement of 40 per cent of the creditors' claims. Was there some talk about your having told us there was a talk about getting a buyer or trying to get a private buyer? A. Yes, sir.

Q. Was there a talk about 40 per cent? A. No, sir. 2552

Q. The creditors had not had any inspection then? A. No, they had not.

Q. So they didn't express themselves as to the value of the stock? A. No, other than what I mentioned, that they discussed with Mr. Hoffman about these percentages and variations.

Q. Here is the important thing, "he"—referring to you—"said that would take about a thousand dollars, 40 per cent," and that you said that you could arrange with Kandell to have this buyer pay a certain amount of money for the assets in the store, that only a part of the money that you and Kandell would obtain from this buyer would be disclosed to the creditors, and that the amount that they would show to the creditors would be the sum of $1,000, or a couple of hundred dollars more, and that the balance would be kept in secret and would be split among Kandell, yourself and Hoffman? A. What is the question? 2553

Q. (Continued) Now, was that or anything like that said at that meeting? A. No.

Q. Outside of the creditors' meeting— A. Can I point out how illogical that is?

Q. And then Hoffman's testified you propositioned him

2554 to the following effect, that the difference reported to creditors and the amount actually obtained from a private buyer, no amount being stated at that time, he said would be split among you three, Kandell, Hoffman and Goldman. Was there anything like that said? A. No.

Q. Was that said in substance? A. Absolutely not.

Q. Was there any proposition that was made either by you or by Wishbow or Hoffman, or any talk at that time, in words or effect, that one price would be obtained and that the creditors would be kept in the dark with respect to the amount of it? A. No.

2555 Q. Then there is something in the record that later, after the meeting broke up, Hoffman said it occurred at this time,—that is right, isn't it?

Mr. Walsh: Yes.

Q. Hoffman also said at that time that he spoke about some letter going out to creditors. On page 81 he said "* * * with regard to the three creditors who were in the room he"—that means you—"would throw them each a ten-dollar bill and they would shut their mouths." Did you say that to him? A. No. I never knew those people, never had any business with them.

2556 Q. I was just going to ask you that. Did you know who they were? A. No, only knew them by name, I ran across them on occasions, but never had any matter or business with them and didn't know who they were.

Q. Did you say to Hoffman at that time, or at any other time or place, that day about that, that a lawyer should keep the creditors at a meeting silent, that is, in order to keep their mouths shut about this deal, that you would throw them each a $10-bill? A. I didn't say anything like that or near to it or in connection with it.

Mr. Walsh: What page is it?

Mr. Corbin: Page 81. 2557

Q. So you say, Mr. Schwartz, the witness who was here yesterday, was present at that meeting? A. Yes, sir; he said that he was there. I assume that that was so; I have no definite impression. I know Schwartz and Zuckerman was a creditor that was there.

Q. Did you have any thought at that time, at the time of that meeting or at the time of these alleged conferences outside of the meeting room, with Hoffman, that Schwartz or any of those other creditors present were dishonest?

Mr. Walsh: I object to the form of that question whether or not he had any thought about anything. 2558

The Court: Objection overruled.

Q. (Read) A. No.

Q. Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect "We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10 bill? Did you have any such thought in your mind?

2559

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

2560 The Court: You have been asking leading questions repeatedly, and I have sustained the objection.

Mr. Corbin: Exception, your Honor.

Q. Did you know, or had you heard, prior to that date of any of those creditors present at that meeting doing anything dishonest? A. Pardon me: I didn't get it.

Q. Did you then know or had you heard that they had done anything in the past, anything dishonest? A. No.

Q. Any reason to believe they were dishonest? A. None.

Q. Did you ever know of them, or any of them, taking any bribe for keeping their mouths shut about anything?

2561 A. I did not.

Q. Did you think at that time that Schwartz would take less than his claim for a $10 bill? A. I did not.

Mr. Walsh: I object to that.

The Court: Overruled.

Mr. Walsh: It is leading and calling for the operation of this witness's mind, and it is not relevant either.

The Court: I overrule the objection.

A. I said I did not.

2562 Q. Well, some notations were made, were they, when the creditors were going to have their buyers appear at the store and inspect the stock? A. There was.

Q. And you dispersed then? A. That is correct.

Q. What next did you hear about the Hymowitz matter? A. When I got back to the office, either that same day or the next day, when I came in contact with my brother Teddy, I told him what had transpired at the meeting, and I told him that there was going to be a reconvening of this creditor group or creditors' committee, or what properly may be termed creditors' committee, because they designated themselves as such.

Q. All right. You told your brother what had happened at the meeting. 2563

Mr. Walsh: I object to that. I think it is not competent what he told his brother.

The Court: Objection overruled.

Mr. Walsh: It is leading.

A. I told my brother what happened at the meeting, that this group was going to reconvene again, and that the store was going to be open for inspection, and I gave him the date and hours that the store was to be open for inspection. 2564

Q. Now, you had attended the meeting in Teddy's absence, Teddy didn't attend that meeting? A. He did not.

Q. And you had reported back to Teddy what had occurred, is that right? A. Yes, sir.

Q. And now did you hear anything more about the matter? A. I didn't hear anything more about the matter until I received a telephone call from Wishbow on April 3rd or April 5th. Wishbow called me up and said, "About this petition in bankruptcy that has been filed." I said, "Now, wait a minute." I said, "What petition in bankruptcy?" I had lost track of the matter completely, and didn't know what was going on: I said, "Wait a minute. Teddy is handling this matter," and I called him over. 2565

Q. Is that the first you had heard that any petition in bankruptcy had been filed? A. That is right.

Q. You said you called Teddy over? A. Yes, sir.

Q. Is this while you were on the telephone? A. That is right. And Teddy told him a petition in bankruptcy is filed and that Jacob Schulman is the attorney for the petitioning creditors. Wishbow kept talking about going forward with the sale on Monday and wanted us to get together on the situation. I said I was not handling the matter; I would have to talk to Teddy or Schulman, the

2566 attorney for the petitioning creditors, and after a few words we hung up.

Q. Did you hang up on him while he was talking, is that what you mean? A. No.

Q. After a few words that ended that? A. That is right.

Q. When did you next hear about it or have anything to do with it? A. I got a telephone call from Mr. Schulman on April 7th, and he told me that he was over before Judge Coxe in connection with a motion made by Mr. Hoffman to vacate a stay he had obtained staying the assignee's sale, and that Hoffman and he wanted to dis-
2567 cuss the matter, and wanted me to go over to his office. He told me Judge Coxe had suggested they get together and adjust the matter. I said I was not handling the matter, that Teddy was, and that Teddy would have to go over.

He said, "Well, I want to tell you what took place before Judge Coxe." He said, "Hoffman"—

Mr. Walsh: Was this over the telephone?

The Witness: Yes, sir. He said, "Hoffman made some comments about you, about the fact that you were trying to break into his case." He may have used some language that aroused my resentment of
2568 things said before a judge in my absence.

I said, "I'm coming right over." And I did come over.

Q. You went over to Schulman's office? A. Yes, sir, which is at 277 Broadway. We are located at 302, just about a block away.

Q. And who was there when you got there? A. Hoffman and Schulman.

Q. By the way, did you have any knowledge or information or suspicion that Hoffman was there in connection with or in cooperation with the F. B. I. men? A. I did not.

Q. Or that the F. B. I. men had instruments on the other side of the wall, to take conversation or anything of that kind? A. I had no knowledge of that, no. 2569

Q. You walked in there and there was Hoffman and Schulman? A. Yes, sir.

Q. What was said? A. I upbraided Hoffman. I asked him what took place before Judge Coxe. I wanted to get it from him. He said Schulman somewhat stirred him on and he told him that I wanted to break into the case. He said the petition was brought about by the fact that I could not break into his case. I said, "the first and the decent thing you should have done, if you had anything to say about me to Judge Coxe, was to tell me that you were going to say to Judge Coxe and afforded me an opportunity to be there." I told him general courtesy in the profession required that one lawyer give notice to another lawyer if he was going to appear before a judge, and to afford him an opportunity to make a reply. I said, "I think every lawyer is entitled to such a chance to make an answer." 2570

One word led to another. It was a heated controversy, is the way I can sum it up.

Q. What was the substance, in addition to what you have said? A. After this argument—this argument went on for a little while—Mr. Schulman endeavored to interfere and said, "I didn't call you over for this purpose. The judge said get together, and let us see what we can do here." He said, "You have no right to permit your personal feelings to enter into the situation no matter what took place, you have to submerge your own feelings in the matter. You have creditors' interests involved, and you ought to get down to a discussion in connection with the matter." 2571

Well, I should say the excitement probably subdued a bit, and then there was a discussion about the stock. Hoff-

2572 man again using the same arguments that he used before the creditors' meeting, and then there was a general discussion in connection with that matter. And finally I left and made a suggestion as to how to determine if there were any uncertainty or if there were any number of people that everybody seemed to be sending down to the place, and what the place was actually worth and any question in anybody's mind of underwriters' salvage. They went over there, and I made that suggestion and then I left.

Q. You have not attempted to give us word for word what was said there, have you? A. No, I have not.

2573 Q. Was there anything said then or later, at any time, so far as you know or heard, about Mr. Severin Scott being paid 25 or $50, or any other sum in order to withdraw the motion that Endicott-Johnson had made? A. Nothing like that.

Q. Or that Mr. Scott would be cut in for $25 or $50? A. I never heard anything like that.

Q. Out of any fund, secret or otherwise? A. Never heard of it.

Q. Now the preparation of these papers, the bill of sale and dismissal of the petition and all that, was handled by your brother? A. That is right.

2574 Q. The matter of mechanics in the office, it was his job? A. It was his case. It was his matter to handle right from the inception.

Q. Did you or your firm ever get any money out of that Hymowitz matter from beginning to end? A. We did not.

Q. Did you ever ask to get any money out of it on the basis of a sale of the assets that is alleged in this indictment for $1900? A. We did not.

Q. Did you ever agree, or know of any agreement, that the stock would be sold to a private purchaser for $1900.

and $1500 to be disclosed to the creditors and the difference of $400 split among you lawyers? A. I did not. 2575

Q. Or split the money between anybody, including Kandell? A. No.

Q. Did you ever agree or conspire with the other defendants, or any of the other defendants, or with any one else, to cheat the creditors by reporting to them a sale at one sum, whereas in truth, the sale was at a larger sum or to be at a larger sum there would be a kickback to you? A. I did not.

Q. Or a kickback to anybody? A. No, sir.

Q. Did you hear of any such thing in connection with the Hymowitz matter? A. No. 2576

Q. Until this indictment? A. That is correct. May I say something here?

Q. All right. Go ahead. A. That $400 allegation, the first time I heard anything about it was when I read it in the newspapers, but I appeared before the two grand juries, one acquitted me in 1938, and voluntarily, and anxiously appeared before the grand jury that handed up this indictment in 1940, and I testified at length voluntarily, appearing for months, originally asked Mr. Schachner to let me come over.

Mr. Walsh: I object to that, your Honor. 2577

The Court: I sustain the objection as to that. You have gone far enough.

Q. You heard me read to the jury this morning the original complaint in this case? A. I did.

Q. Were you arrested at that time when Kandell was arrested? A. I was not.

Q. Was any charge made against you? A. None at all. And I appeared before the 1938 grand jury because I had learned of Mr. Kandell's arrest, and I wanted to go out and find out and give them every aid—

2578 Mr. Walsh: I object to that, your Honor.

The Court: Sustained.

Q. Never mind. The first time that there was any charge against you, so far as you know, was in 1940, January or February of this year, isn't that right? A. Further than that—

Q. Is that right? Just right or wrong? A. Yes, sir.

Mr. Corbin: That is all—may I just do a slight bit of arithmetic.

2579 Q. If $80, if any arrangement were made whereby $80 was to be given to three sources, one of those sources being you or your firm, what would be your cut in the $80, by virtue of your firm? A. That would have to be predicated upon what I heard here testified in the same respect I heard Mr. Hoffman say—

Mr. Walsh: I object to that, if your Honor pleases.

The Court: Yes. I will sustain the objection.

Q. What was the percentage of your interest in your firm? A. I—

2580 Mr. Walsh: Now I wish this witness would wait till I make a legal objection.

The Court: Yes.

Q. What was the percentage in your firm?

Mr. Walsh: I object to that as improper, if your Honor pleases, on the ground that there is no charge that his firm was going to—the specific allegation is that he and his brother were getting it.

The Court: I will overrule it.

Mr. Walsh: And it is immaterial and irrelevant.

The Court: I will overrule the objection. 2581

A. It wouldn't make very much difference at that because—

The Court: The question is: What interest did you have in the firm?

The Witness: 40 per cent.

Mr. Corbin: All right.

Cross examination by Mr. Walsh:

Q. Now you say, Mr. Goldman, that you had nothing to do with this other than appearing at the meeting on March the 25th at the creditors? A. That is correct, and 2582 attending this conference at Mr. Schulman's office on April the 7th, and a telephone call from Mr. Wishbow, I think, on April the 3rd.

Q. I mean outside of that, what you have already testified to on direct— A. That is correct.

Q. (continuing) You had nothing more to do with that? A. That is correct.

Q. Did you keep in touch with your brother Teddy Goldman— A. Only insofar—

Q. —concerning, for instance, after Wishbow called you up—you say you don't remember if it was the 3rd or 5th, is that correct? A. That is correct. 2583

Q. It has been testified here that it was the 3rd. If I remember correctly, the testimony is—and I say this to refresh your recollection so that you can fix the date—that the hearing before Judge Coxe was on April the 5th. Now are we agreed that it was prior to the hearing that Wishbow called up? A. Well, even if I—I wouldn't know whether it was April 3rd or 5th by the statement you just made because it could have been before the hearing—

Q. Was it prior to the hearing before Judge Coxe? A. Oh, yes.

2584 Q. And that was on April the 5th? A. That is right.

Q. Did Wishbow tell you on that occasion that Hoffman was preparing an affidavit? A. He did not.

Q. In which he, Hoffman, was setting forth the conversation as you have heard Hoffman testify from the stand, setting forth all the facts in order to make a motion to dismiss the petition in bankruptcy? A. He did not.

Q. He never told you that? A. No, sir.

Q. Did you tell Wishbow on that occasion that he was lying? A. Lying as far as what?

Q. Lying insofar as the allegations that were contained in this affidavit are concerned and which he recounted
2585 to you over the telephone? A. He never made any such allegations.

Q. In other words, what was the conversation that you had, between Wishbow and yourself, whatever date it was? A. Wishbow started off by telling me about the petition in bankruptcy and tried to have me to use my influence and my good offices—I am using my own language—in endeavoring to get him to continue on with the sale and keeping Hoffman and Kolman in the assignment proceedings, and that was the extent of this conversation. You must bear in mind that Wishbow was the auctioneer in this matter.

2586 Q. I understand that. And that was the sum total of the conversation? A. In substance, yes.

Q. Well, do you remember anything else at this time? A. No.

Mr. Corbin: You mean in addition to what he said on direct examination, I suppose.

Mr. Walsh: I asked him for the full and complete conversation that he had with Mr. Wishbow over the telephone.

Mr. Corbin: Well, I don't want him to make that point later on.

Mr. Walsh: I am not trying to make any point. 2587
I just want to get the truth here. I asked him if in fact that was said.

Q. Didn't I ask you that question? A. Yes.
Q. Isn't that a fact? A. Yes.
Q. Well, what is it? A. Whatever I testified to, that you asked me.

The Court: He is asking what was the conversation between you and Wishbow, so go ahead and give that conversation as you recall it.

Q. Over the telephone? A. All right. If you want me 2588
to give you the additional details about the talk, that I told him I wasn't handling the matter, the fact that my brother Teddy and that Mr. Schulman was the attorney for the petitioning creditors, that is some items that I left out of your—the answer to your question.

Q. You also testified on direct, did you not, that you called Teddy over? A. No, I called up Teddy.

Q. Well, did Teddy come over and tell you? A. I don't recall. I may have gone out—

Q. Didn't you say on direct just a few moments ago that the petition had been filed and you did not know 2589
what Wishbow was talking about? A. I first told Wishbow that I did not know what he was talking about and I would have to wait—

Q. May I interrupt for a moment? Did you or did you not just testify on direct examination that during the telephone conversation with Mr. Wishbow you called your brother Teddy over and asked him whether or not a petition in bankruptcy had been filed? Can you answer that yes or no. A. Well, I either called him over, put him on the extension then—

Q. Well, did you speak with Teddy on that occasion? A. I did.

2590 Q. And did you ask him whether or not a petition in bankruptcy had been filed? A. My present recollection is that I did.

Q. And was that the reason that you told Wishbow that you would have nothing more to do with it, that it was Teddy's matter? A. No. The reason I told him that was that it was Teddy's matter from the inception. Teddy handles Harry Levy's business.

Q. How long have you known Harry Levy? A. Quite a number of years.

Q. He used to be your client, wasn't he? A. There is no distinction so far as the office is concerned—he was
2591 an office client.

Q. So there is no distinction between yourself and Teddy so far as his client is concerned. He was a client of you and Teddy, is that correct? A. No. He was a client of the firm but Teddy handled his matters in the main.

Q. When did you first find out about this Hymowitz matter? A. On March 24th.

Q. And who told you? A. My brother Teddy.

Q. And did you have the conversation with him at that occasion? A. I did.

Q. Was anything on that occasion said about taking a retainer over and getting in on this matter? A. No.
2592 Q. As co-attorney? A. No.

Q. Did Teddy do that on his own responsibility? A. I assume so.

Q. You heard him testify? A. I heard him also say that the clients wanted to see the creditors got control and if he would have told me about it, either on March 24th or 25th, or at any other time, I would have—

Q. Would you have suggested that he take the retainer with him? A. I would have told him to see that the client got what he wanted. I would have no objection to his doing it. I would have approved of—I beg your pardon?

Q. It is a fact, however, that creditors may have control 2593
and your firm need not be retained. It is a fact, isn't it? A. There has to be some creditors' attorney representing the creditors.

Q. That is a fact, isn't it? A. Why, certainly.

Q. Your firm wasn't the only firm in the city or the only firm that represented creditors in that insolvency proceeding: is that a fact? A. In every insolvency case there is more than a creditor, yet there is only one attorney representing the creditor body.

Q. I understand. That isn't the question. A. What is the question?

Q. My question is this: that were you the only attorney 2594
for the creditors that could be retained on that occasion? A. Well, as far as we were concerned we were serving our client, Harry Levy. We had no other creditor interested and when we were serving him we were serving the creditor body, in conserving the assets in accordance with Harry Levy's wishes and experience in these matters.

Q. And if my memory serves me correctly, you said that had you known that you would have sent Teddy over with the retainer the next day. A. I would have—a method of approach—I don't particularly want to now adopt it, but I say I would have approved the practice of having 2595
an attorney for creditors step into a picture where an attorney for a debtor has taken hold of assets.

Q. As a matter of fact, didn't Teddy first tell you that there were claims of the mother and the sister of Paul Hymowitz, and that Hoffman was representing them? A. No, I don't think he told me that. He may have: I don't recall.

Q. So, so far as you know Hoffman may have represented Mrs. Hymowitz and the sister of Hymowitz? A. That would still be representing the debtor. The relationship is so close.

2596 Q. I understand that. A. That we couldn't put these creditors in that category.

Q. Will you please allow me to ask a question.

Mr. Corbin: I don't think you have to lecture the witness.

Mr. Walsh: I am only doing this, if the Court please—

The Court: Very well. I will settle it. Mr. Witness, let him ask the question, and Mr. District Attorney, give him time to answer. Now proceed. Propound the question.

2597 Q. Have you on any other occasion sent Teddy Goldman over to any assignee, or the attorney for any assignee with a retainer as co-attorney in the particular insolvency proceeding? A. I don't recall.

Mr. Corbin: I object to that as immaterial.

Mr. Walsh: I think that shows motive.

The Court: I will overrule the objection.

A. I don't recall.

Mr. Corbin: There is no evidence that he sent him over in this case.

2598 Q. You don't recall?

Mr. Corbin: Exception.

Q. Do you deny that you ever did that? A. I cannot deny it if I don't recall.

Mr. Corbin: Exception.

The Court: I will sustain the objection upon the ground that he has already answered it.

Q. You are ready to leave it "you don't recall?" A. That is correct.

Q. You know, quite a little of bankruptcy work, do you not, sir? I mean, with due modesty. A. Yes. I hope I knew more. 2599

Q. What is that? A. I hope I knew more—well, I don't mean that.

Q. Did Teddy tell you on the night of March 24th that he was going over there with a co-attorney retainer? A. No.

Q. Did you know whether or not Teddy had gone over on March 25th with a co-retainer when you appeared at the meeting of creditors on March 25th? A. I don't recall whether I did.

Q. Is it possible that you did? A. It is possible that I did know and it is possible that I didn't know. 2600

Q. Well, did Teddy ever tell you that when he was over there and had a conversation with Mr. Hoffman on March the 25th that he said that unless he was retained that "we would throw them into bankruptcy?" A. Teddy never told me such a thing.

Q. Teddy never told you that? A. No, nor did I hear it anywheres else except here in court.

Q. Mr. Kandell never told you that? A. No.

Q. Now I am going to skip over everything so far as the meeting goes because you described that briefly this morning. By the way, do you know what a whistling petition is? A. Never heard of it in my life. You— 2601

Mr. Corbin: I did not catch that.

Mr. Fielding: I never heard of it.

A. I would be curious to know what it is.

Q. A whistling petition—

Mr. Corbin: I heard of a whistling petitioner but I never heard—

Mr. Walsh: May I explain? The whistling petitioner, I have heard of that, and that is the result

of the whistling petition. A whistling petition is a petition similar—

Mr. Corbin: I object to the "whistling" business.

Mr. Walsh: He asked what it was, if your Honor please.

The Court: I sustain it.

Mr. Walsh: I would like to explain it to him.

Mr. Corbin: Well, he can explain—

The Court: He said he never heard of a whistling petition.

Mr. Corbin: I don't think anybody ever heard of it. I don't know whether they have it down in Mississippi, Judge.

The Court: I don't think we will discuss it. Proceed with your next question.

A. Mr. Walsh, that is a new one on me.

Mr. Walsh: Can I tell him what it is?

A. No, you can tell me afterwards.

The Court: If you have a question you want to propound to him, you may do so, but it is not necessary to explain what a whistling petition is. If you want to ask about some petition or any type of petition you may proceed along that line.

Q. The petition that was filed in this case was a petition that could be dismissed because it did not state facts sufficient to constitute an act of bankruptcy? A. Every petition can be dismissed.

Q. But some have to have notice to the creditors. A. It is all a method of procedure adopted by the lawyer that handles the matter. You can dismiss an involuntary petition with allegations, without; you can dismiss a voluntary petition. There isn't a petition that is filed that can not be dismissed.

Q. With consent? A. I beg your pardon? 260

Q. Some of them— A. No, no, you need not have any consent; not necessary at all. You can file a petition and dismiss it without any consent.

Q. Can you file a petition in which there is an assignment for the benefit of creditors— A. And have it dismissed?

Q. —without the consent of the creditors? A. Yes, you can.

(Inaudible remark made by Mr. Corbin.)

Mr. Walsh: Do you want to testify, too, Mr. Corbin?

Mr. Corbin: I can testify to that. 2606

The Court: Very well; one at a time, gentlemen. Proceed with the questioning of this witness.

Q. As a matter of fact, Mr. Goldman, this petition that was filed in this case was subsequently dismissed on the ground that it did not state facts sufficient—wait, I want to get the exact language. A. You are just using legal terminology. It was demurrable, this petition.

Q. And a motion was signed by Mr. Hoffman and a copy was sent to Mr. Schulman? A. And the procedure did not—

Q. And he did not object to it? A. Mr. Walsh, may I 2607
point this out, that with or without that allegation this petition could be dismissed. Now I have heard a gooddeal of that talk, questions asked. We, when we sent out creditors notice of the vacatur of the assignment—

Q. Please— A. Will you let me finish?

Q. Yes, sure. A. I have been—

Q. Will you make this briefly, though. A. When we sent out these notices to the creditors in connection with the vacatur of the assignment, we sent that by registered mail and we asked for the consent of every creditor through this 40 per cent arrangement.

2608 Q. And were you explaining that legal proposition, or are you going on to something else? A. I am giving you the facts of this case which I have been trying to do for two years and which I successfully did in 1938.

Mr. Walsh: Would you read the question that I asked—or I will withdraw it and start again.

Q. May I do that? A. Pardon me?

Q. May we start anew, or did you want to say something else? A. I can add—I want to finish this, what I was explaining to you, if you will permit me.

2609 Q. Go ahead. A. And I said that we had sent out by registered mail—and when I say "we" it was usual in this case. I didn't have any direct or personal contact with it—and contained in that registered notice was a notice of the sale of these assets and each creditor got it by registered mail. In addition to that—

Q. What date was that? A. May the 13th.

Q. May the 13th, 1900 and what? A. 1937.

Q. 1937. A. And in addition to that—

Q. Yes. Go ahead, sir. A. In addition to that there was contained in that envelope a letter to the creditors explaining to them that arrangement we made to dismiss

2610 the petition. There was also contained in that enclosure a form of notice, a form of consent to be signed by each creditor, which consent in effect would vacate the assignment, discharge the assignee and release him of his bond and giving creditors' consent, that is, of the 40 percent settlement. Now this entire plan was predicated and dependent upon the consent of each creditor.

Q. You knew all about the plan? A. I know now all about the plan.

Q. You knew then, didn't you? A. When?

Q. When it was being enacted? A. On March the 25th?

Q. On March the 25th? A. That is correct.

Q. You knew about the meeting? A. That is correct. 2611

Q. On March the 3rd you knew that a petition had been filed? A. April the 3rd.

Q. April the 3rd; on March the 5th— A. April the 5th.

Q. April the 5th you knew that there was a meeting? A. Yes.

Q. Before Judge Coxe, and then you subsequently went over on April the 7th to Mr. Schulman? A. No, no. You are trying to infer that I knew those things on those particular days? I knew all those things at a subsequent period. I knew March 25th on March 25th.

Q. Because you were there? A. And I knew March 24th on that day—that is correct. 2612

Q. Well, did you know the petition had been filed on April the 3rd? A. You asked me did I know it when?

Q. On April the 3rd. A. I say that I may have known it on April the 3rd. I may have known it on April the 5th. I don't recall what day.

Q. You don't remember when you spoke to Teddy and he told you that the petition had been filed? A. I don't remember if the call came in from Mr. Wishbow and that is the occasion that would set the date. If I knew actually when he called I would be able to tell you with definiteness what the date was.

I wanted to continue, Mr. Walsh. 2613

Q. Go ahead. A. And that this entire plan was predicated upon the consent of every creditor. This plan would fail—

Q. Now you are talking of May 13? A. I am talking of the whole thing, going back to March 25, the origin, and inception of this matter as outlined by the people who attended the meeting of creditors on March 25, and subsequently it was put into operation on May 13 by this letter that I referred to and by this registered notice to the creditors. Each creditor was required to consent to

2614 it. It was to the—it was within the discretion and the right of the attorney for the debtor to determine if he wanted to waive any particular creditors' insistence upon failure to give a release, and so, as far as we were concerned, we owed an obligation under the understanding—that is, the creditors' side of it—to obtain consents from each and every creditor. What would be the value of having a petition, as has been talked about so much—

Q. I don't know. A. What value would there be—

Q. Are you asking me? A. (continuing) About the dismissal of a petition without the consent—

Q. Are you asking me? A. No, Mr. Walsh. I am trying
2615 to reason with you. I am trying to point out to you what the facts are and I can do it in no other way.

Q. Will you just answer the question. A. Yes.

Q. I don't want to cut you off if you have an explanation to make to the jury; that is perfectly all right. I do not want to cut you off, but I do want you to answer the question, and the question is this: The petition that was filed on April the 3rd, Government's Exhibit 3 in evidence, was subsequently dismissed, wasn't it? A. It was.

Q. Now my question is this: Were any notices sent to creditors when that petition in bankruptcy, which was
2616 filed on April the 3rd, Government's Exhibit 3, was dismissed? A. It was not; no notices.

Q. There were no consents or no notices sent on that—A. No notices of pleadings, that is correct, of a procedural demurrable dismissal.

Q. In other words, there were no consents or notices sent to the creditors, is that correct? A. That is correct. It could just as well have been.

Q. Now that is an answer. I will take that. A. That is correct.

Q. There were no— A. No notices sent out to any creditors; not required under the law.

Q. The creditors did not know the petition was dismissed? A. You tell me the creditors did not know. That you presume. 2617

Q. No notices were sent out. A. All right; that is another thing. I will concede no notices were sent out, but I can't assume that the creditors did not know. Our client knew; these three other petitioning creditors knew, and other creditors probably knew.

Q. You heard Schwartz testify yesterday, didn't you? A. Yes, I heard him.

Q. He did not know even if the matter was still in bankruptcy. A. Well, I think that he has a poor conception of the distinction between bankruptcy and assignment. 2618

Q. I don't want you to explain it.

Mr. Walsh: I would like to have what he said Mr. Schwartz thinks stricken from the record.

The Court: Very well. I will strike it out because it is immaterial whether he heard Schwartz testify or not—on his cross-examination. I meant to say.

Q. Now we are coming back to that conversation between yourself, Mr. Goldman, Mr. Hoffman, and Wishbow out in the hall. A. On March the 25th. 2619

Q. On March the 25th. That was after you described briefly what transpired in the meeting, and then Wishbow and Hoffman went out and you subsequently joined them. That is a fact, is it not? A. That is right.

Q. Now if my memory serves me correctly—and you correct me if I am wrong—when you testified on direct you said something that there was going to be something about "two funds?" A. That is correct.

Q. Do you remember testifying so? A. That is correct.

Q. And do you take Mr. Schulman's explanation that one was going to be unofficial and one was going to be

2620 official? A. I don't take Mr. Schulman's explanation for anything. I don't need his explanation. Do you want me to give you my explanation?

Q. Of the two funds? A. Yes.

Q. You do say there was something mentioned about the two funds out there, is that correct? A. Whether the expression used was "two funds" or whether there the expression used was "there would be a fund for the creditors, general creditors, and a fund for the administration expenses" or not, I don't know, but the theme of the conversation was—

Q. Wait a second. May I ask you this: Were there
2621 "two funds" mentioned out in that meeting between yourself, Hoffman and Wishbow? A. You can use—I can only give you what took place, Mr. Walsh. I can't—

Q. I can understand what took place from what you said. Did you mention that on direct examination, "two funds?" A. Well, I may have mentioned it in describing it.

Q. Yes. A. Now you want to know whether that expression was actually used.

Q. No. Isn't that what you just testified to, right now, on direct examination? A. So far as—

Q. Did you or didn't you? A. Now, Mr. Walsh, I testified, and I can repeat my testimony only in sub-
2622 stance—I tell you that the tenor of the conversation—

Q. I am asking you one question, please. A. Yes.

Q. Did you or did you not on direct examination say or mention that there was a mention of "two funds", when you, Hoffman and Wishbow were talking out in the hall? A. Quite likely.

Q. Well, did you? A. Quite likely.

Q. Well, did you? A. Perfectly plausible.

Q. Never mind "perfectly plausible." Did you?

The Court: Mr. Goldman, answer yes or no, if you can do so: yes or no?

Q. And I will have it read back to you. 2623

The Witness: If your Honor pleases, will you read back the question and answer?

The Court: No. We are not going to do that. The question is: Did you on direct examination in this conversation say that there were "two funds"? Did you testify to that or not? If you don't remember, say so.

The Witness: I said in answer to that, your Honor, "quite likely."

The Court: Very well. That is sufficient.

The Witness: I said that before. 2624

The Court: You may proceed.

The Witness: I said "quite likely" and if Mr. Walsh will permit me to explain I will tell him that the tenor of the conversation—

Q. I only asked you that question.

The Court: Wait till he asks you another question. Proceed with the question, Mr. Walsh.

A. You are making a point of it, Mr. Walsh, and will you let me explain it?

Q. Go ahead and explain it. 2625

Mr. Walsh: Let him explain it, if your Honor please.

A. I will tell you what I told on my direct examination, that the conversation—

Q. Wait a second. Before you start on your whole direct examination, confine yourself to that one point, whether or not you said that there were "two funds;" briefly. A. That is correct. I said that there would be an answer to Mr. Hoffman's concern about his fee as

2626 assignee—as assignee's attorney, and Mr. Kolman's fee and compensation. I said to him that in every case—and in this case it will be—it will be proceeded with in the same manner, that when the assets are liquidated and the fund is obtained there must be a segregation of the fund, one to be used to pay in full—to pay in full priorities and administration expenses, and the other to pro rate on a percentage basis to all the general creditors. Now if that is your interpretation that I used the words "two funds" I am willing to stand by it.

Q. That is not my interpretation.

2627 The Court: Very well. Don't get into any argument. If you have any further explanation, go ahead. If not, Mr. Walsh, proceed with your questions.

A. Well, I did say "two funds." That is exactly the way I described it.

Q. That is what I have been trying to get from you for the past fifteen minutes. You did say "two funds," didn't you? A. Yes, that is right.

The Court: Very well, gentlemen. I believe that is a good point to take a recess.

2628 Recess until two-ten, if you can get back by then; if not, two-fifteen.

(Recess until 2:15 p. m.)

AFTERNOON SESSION.

MARTIN M. GOLDMAN, resumed the stand and further testified as follows:

Cross examination continued by Mr. Walsh:

Q. How long do you know him, Schulman? A. I guess I came in contact with him in the law practice some years ago.

Q. Some years ago? A. Anywheres from five to seven years, probably. 2629

Q. That brings it down to 1933. A. It may bring it down a little further than that; probably 1934 or 1935.

Q. And you have been associated with him in the practice of law, you said? A. No.

Q. I mean not as a partner; associated in cases with him? A. I doubt it. We may have come in contact in cases where he represented creditors and we did. In most instances, as I recall, he was on the other side.

Q. In any event you have been in many proceedings with him where you represented some people and he represented others? A. I would say few. 2630

Q. How long have you known Mr. Kandell? A. To go back, 1935 or 1936.

Q. And do you know Louis Abramson? A. No.

Q. Had you ever met him before he appeared here in court here today? A. When he appeared here in court it sort of brought to my mind that I may have seen him on occasions; met him in one matter or two matters at the outside. I don't think I ever had any business with him.

Q. Do you remember whether he was one of the buyers in any matter you were interested in? A. I don't recall.

Q. Were you asked on any occasion before the grand jury whether or not you ever knew Louis Abramson? A. 2631 Yes, sir, I was.

Q. And what did you answer, do you remember? A. I think if you will give me the question and answer I will be able to refresh my recollection.

Q. You said you had? A. Yes, but I don't recall the question or the answer.

Q. "Did you know Louis Abramson?" and you said, "Yes." A. I beg your pardon.

Q. The question was whether or not you knew Louis Abramson, and you also testified to the grand jury you

2632 did. A. I don't think I ever conveyed that impression here or in the grand jury that I knew him. My—

Q. Well, as a matter of fact— A. Pardon me. May I finish it?

Q. Surely. A. My impression up to the time he appeared in court, if I saw him I would not know him, and when he came here and sat here, it came to my mind probably I did, but I never had any business dealings with him.

Q. Have you ever had any business dealings with Kandell? A. Yes, sir.

Q. Have you represented him or his clients on any occasion? A. Yes, sir.

2633 Q. Is he one who usually gets a buyer, Mr. Kandell? A. I don't know anything about that.

Q. You don't know anything about that? A. No.

Q. Did you see Mr. Schulman, or did you communicate with Mr. Schulman, between April 5th, the date when the argument was before Judge Coxe, and April 7th when you went over to his office? A. No, sir.

Q. Now will you tell us once more what Mr. Schulman told you when he called you up on the afternoon of April 7, 1937? A. He told me Mr. Hoffman was at his office, that they had been before Judge Coxe in connection with the motion made by Mr. Hoffman to vacate an order of

2634 stay staying the sale that was scheduled for April 5th, and that after argument on the motion Judge Coxe denied the motion to vacate the stay, and then they told me that Judge Coxe suggested they get together, and asked me if I would not come over.

Q. You were not interested in the matter? A. I was interested in the matter,—my firm was.

Q. You didn't go over there? A. I didn't go over there until he told me some additional things. I told him, when he finished with that part of the conversation, I told him my brother was handling the matter and he would

have to take care of it. Then he told me Mr. Hoffman made 2635
some comments; some slurring remarks about me to Judge Coxe.

Q. Did he tell you that over the telephone? A. He told me, Mr. Hoffman said I instituted the petition in bankruptcy, and that the only thing, about filling the petition in bankruptcy, that we wanted to get into the case, and I attempted to break into the case.

Q. That is what Mr. Schulman told you? A. Yes, sir, that is correct.

Q. And then you went over to the office? A. That is correct.

Q. You knew, did you not, before you went over to the 2636
office that Mr. Hoffman had excited you, as you put it, because he said you were trying to break into the case, prior to the time you went over to the office? A. Yes, sir.

Q. Who told you that? A. Mr. Schulman.

Q. Do you refer now to the telephone call? A. That is correct.

Q. Did you know it prior to the time that you heard from Mr. Schulman on April 7th? A. I did not.

Q. Didn't you have a telephone call with Mr. Wishbow, and didn't Mr. Wishbow tell you that Mr. Hoffman was going to make an application to the Court to dismiss the petition and also relate to the Court, as you termed it— 2637
what did you say about getting into the picture? A. Breaking into the picture.

Q. Didn't Mr. Wishbow tell you that when he called you up? A. No; my recollection of that conversation was Mr. Wishbow tried to get me to inject myself into it, so that he could get along with the sale.

Q. To have you use your good graces about having the petition dismissed so he could get his fee as an auctioneer? A. So that he could conduct the sale.

Q. Did he relate anything to you about throwing $10 to the creditors? A. At this telephone conversation?

2638 Q. No; did Mr. Wishbow tell you and remind you that you had stated to Wishbow and Hoffman that you would take care of these creditors by throwing them a $10 bill? Did he say that to you? A. No.

Q. Did you tell Mr. Wishbow on that occasion that he lied? A. No, sir.

Q. Will you tell me once more what was the conversation you had with Mr. Wishbow when you say it was April 5th and Mr. Wishbow said it was Saturday, April 3rd? A. I said it was either April 3rd or 5th.

Q. Is your memory refreshed now as to when it was? A. No.

2639 Q. Tell us the conversation please once more. A. The substance of the conversation was that he was endeavoring as nearly as he could—

Q. Will you repeat what Mr. Wishbow told you and what you told Mr. Wishbow? A. Mr. Wishbow started the conversation by asking me, in connection with the petition in bankruptcy, asking me what was the idea. I said, "Just wait a minute. I don't know anything at all about a petition in bankruptcy."

Q. Then what did you do? A. I called over my brother and asked my brother about it and he told me about the petition in bankruptcy, and it was then Wishbow said to 2640 me, "I want to go ahead with the sale, it is already scheduled for Monday, and cannot we compromise this matter?" That seems to be the language he used—"Can not we get together on this?"

I said, "Schulman being the attorney for the petitioning creditors, you take it up with him." I think I commented that Teddy was handling the matter, and "take it up with him."

Q. Did you know at that time when you were having this conversation that an order had been granted by one

of the judges of this Court staying the sale? A. Wishbow told me that. 2641

Q. That was not served on them until Monday, the time of the sale? A. That is correct.

Q. You said you also obtained an order staying the sale? A. If it was April 3rd, it could not have been. Let me just review this.

Q. Just a moment. Give me those exhibits.

(Handed to Mr. Walsh.)

Q. I show you Government's Exhibit 3 in evidence, which is the involuntary petition in bankruptcy, and also the petition and order, and ask you whether or not that refreshes your recollection as to when you had a conversation with 2642
Mr. Wishbow. A. No, neither paper refreshes my recollection.

Q. The order was also granted on April 3rd, was it not? A. That is correct.

Q. And did Teddy tell you anything also about an order having been obtained to stay the sale as of April 5th? A. He may or may not.

Q. You don't remember that? A. No; but Wishbow, knowing a petition had been filed, that his sale could not go forward unless the petitioning creditors, the attorney, wanted to have it done, they could stay the sale by mere 2643
service of a notice that the petition had been filed, or by obtaining an order of stay.

Q. That is what they did, by obtaining an order of stay? A. That is correct.

Q. When did you first find out that Mr. Schulman was the attorney and had filed a petition in involuntary bankruptcy? A. When I received this telephone call from Mr. Wishbow and asked my brother about it.

Q. Did you at that time ask him if he had a copy of the petition? A. No.

Q. Did you look at the petition? A. No, not until recently.

2644 Q. When? A. When we had these conferences at Mr. Corbin's office.

Q. And was that the time you found out that the name Goldman, Malter & Goldman had been erased? A. It came about this way: When these conferences took place we were trying to find out what actually happened, and the various persons told us what they had done in the matter, and there seemed to be a conflict on some of the facts, and it developed Mr. Schulman had stated that the petition in bankruptcy was prepared in our office. It was then that a copy of the petition was obtained, and then Teddy made some inquiry about it. He was still not sure that he
2645 prepared the petition or that the petition was prepared in the office. I think he looked at the petition and went back to the office and made some inquiry about it, and I think afterwards he conceded that the petition in bankruptcy was prepared in the office.

Q. Wasn't it the fact you stated this petition was prepared in your office when you knew the government had the information that the name Goldman, Malter & Goldman had been erased and the name Schulman put on? A. We didn't know. We were trying to find out. I was asked that question in the grand jury room when I appeared before the grand jury voluntarily. That erasure may have
2646 been one of the elements that entered into his determination that the petition was prepared in the office.

Q. Was that the first time that you had ever conferred in this case with your brother? A. No; I conferred with him in 1938 when I went to the grand jury.

Q. Did you confer with your brother when you appeared before the last grand jury? A. I did.

Q. And did you also confer with Mr. Schulman before you appeared before the first grand jury? A. No.

Q. Or the last grand jury? A. I did not.

Q. You are absolutely sure of that? A. That is correct. 264

Q. There is no question about that? A. There is not any question about it. Now, Mr. Walsh—

Q. I didn't ask you a question. Do you want to volunteer something? A. No. You asked me the last question—

Q. I thought you answered it. A. You asked me about conferring with him. I may have called Schulman and asked him some questions about the case. I may have telephoned or gone over. Now I am not definitely certain about that.

Q. Is there anything else you would like to add? A. 2648
No.

Q. Did you ever go over with Teddy, your brother, and confer with him? A. What time?

Q. Before you appeared before the last grand jury. A. Are you talking about the January, 1940 grand jury?

Q. Yes. A. It may be possible, but I doubt it.

Q. I don't know. A. I am not sure.

Q. You would not deny you had? A. I cannot deny or admit it, because I don't remember.

Q. Now, when you got over to Schulman's office, Hoffman was there, was he not? A. You are referring to April 2649
7th?

Q. April 7th. A. Yes, sir.

Q. What was it you said on that occasion when you first saw Mr. Hoffman? A. I asked him to tell me what Hoffman had said before Judge Coxe. I asked him to tell me in what respect I had done anything in this matter that justified him in making any comment to Judge Coxe. I asked him further what right he had to go over to Judge Coxe and make comments in my absence; I told him common courtesy certainly deserved that notice should have been given to me, or his advising me that he was about

2650 to go before Judge Coxe and make statements concerning me. I was very much concerned about the fact, and naturally I resented it, and we got into an argument about it.

Q. Well, did he tell you on that occasion what he had stated before Judge Coxe? A. He did.

Q. And did he tell you what he did on the stand? A. He did not.

Q. He did not? A. No, sir.

Q. Nothing like it? A. No, sir.

Q. Then why did you get sore? A. Because he said I tried to break into his case, we filed a petition because of that, that I instigated the petition. I couldn't remem-

2651 ber exactly—he used some language, "try to break in."

Q. Did he use the word "chisel"? A. He may have used that; he may have used some other word.

Q. And how long would you say this conversation took place on April the 7th at Schulman's office? A. I haven't any idea.

Q. Well, would you say it was ten minutes? A. I haven't any idea. I haven't any idea whether it took ten minutes or thirty minutes. I haven't the slightest conception of length of time.

Q. Well, it wasn't one minute? A. Oh, it was more than one minute.

2652 Q. Give me an approximation. A. I can't give you anything near there—I couldn't possibly remember the length of time. I know I was there a short period. That is my impression.

Q. Was it 15 minutes? A. It may have been 15 minutes; it may have been a little longer.

Q. Well, was it 20 minutes? A. I can't tell.

Q. Well, is that your best recollection? A. It is.

Q. That it was longer than 15 minutes? A. I haven't any idea whether it was 15 minutes or a half-hour, but my impression has always been—

Q. In any event, it was longer than 15 minutes. Is that your best recollection at the present time? A. No. My reaction to that particular conference at Schulman's office was that it was a short period. I came in there, had some argument with him— 2653

Q. I don't mean now how long you were in Schulman's office. I am asking you now how long was the conversation between you and Hoffman when Hoffman was telling you what he said before Judge Coxe and when you were making comments to Mr. Hoffman. That is the question. Did you understand me? A. Oh, I don't know whether that took more than just a few minutes.

Q. How many minutes? A. Oh, I don't know. I can't possibly conceive—I doubt whether it took more than five minutes. 2654

Q. Did you misunderstand my question before? A. I did. I thought you mean the sum total of time expended.

Q. No. I am referring specifically to the acrimonious discussion, we might term it, between yourself and Mr. Hoffman in the office of Mr. Schulman. A. I doubt whether it took more than a few minutes.

Q. Well, how many is a few minutes? A. Well, I would say anything less than five minutes.

Q. It wasn't more than five minutes? A. Oh, I am positive of that. 2655

Q. About four minutes? A. Well, I wouldn't say.

Q. Well, you were there; I wasn't, Mr. Goldman. That is the reason I am asking you these questions. Can you approximate it at this time? A. I wish I could tell you. I absolutely can't possibly tell.

Q. Did you discuss that with Mr. Schulman when you had the conference? A. Oh no; that was unimportant.

Q. That was unimportant? A. That was of no consequence.

Q. You only discussed the important phases of it? A.

2656 We discussed the facts of the matter and what developed and we had learned what had been done here that was allegedly complained about, we were trying to get all the facts together.

Mr. Walsh: I move that it be stricken out.

The Court: I will overrule the motion to strike out and I will direct the witness now to give a direct answer to any question that may be put, and for any reasonable explanation that he recalls as to what actually happened, without his conclusions. He may give in full his best recollection of what happened or what was said.

2657

Q. Now I show you Defendants' Exhibit F, Mr. Goldman and ask you whether or not you have ever seen that before. A. I have.

Q. Where? A. I saw that—I surely saw that at the conference at Mr. Corbin's office. Of that I am certain.

Q. There is no question of that fact? A. I don't think there is any question about that.

Q. That was gone over? A. Yes.

Q. And Kandell was there at that time? A. That is correct.

2658 Q. From whom did you receive it? A. Oh, it was on the table. I don't know. I didn't receive it. I knew it was there. It was part of the papers that were gone over by the attorneys and the defendants.

Q. Do you know where you got it? A. No, I haven't any idea.

Q. Well, had you ever seen that paper prior to the time that you had this conference in Mr. Corbin's office? A. Oh yes, I did.

Q. When? A. I must have seen this paper away back in 1938 when I went over to the grand jury.

Q. As a matter of fact, you had that paper with you in 2659
1938? A. Yes.

Q. When you did appear before the grand jury? A. That is correct. I may have had it with me, as I had it away back as far as 1938.

Q. There is no question about that fact, is there? A. Well, I think it is quite likely that I did have it.

Q. To whom did that paper belong, and where did you get it? A. Well, my recollection is that that paper was in our file, or I had asked Kandell to send his file down before I went to the jury.

Q. That was in 1938? A. That is correct.

Q. And did you have any other file of Mr. Kandell? A. 2660
Oh yes, I had his entire file.

Q. And you received the file after April 25, 1938? A. That is right.

Q. That was after he was arrested? A. That is correct.

Q. Did you ask for the file or did he send it over to you voluntarily? A. I asked for it.

Q. When? A. Well, soon after I heard of his arrest and soon—

Q. Let me get this straight. Shortly after his arrest you then communicated with him and he sent this file over, of which Defendants' Exhibit F in evidence was one of the 2661
papers? A. Those—that paper there?

Q. Yes. A. That may have been in our file. I don't recall.

Q. Well, you just testified, did you not, sir, that that was Kandell's memorandum? A. No, that was Kandell's memorandum originally made. Now it may have been taken over by my file when I brought the file back to the office, when I had gone up on the matter.

Q. Gone to where? A. On the meeting of March 25.

Q. You mean to say you took this back on March 25? A. I may have. I don't recall. I know that I had that paper in 1938.

2662 Q. Well, isn't it a fact that you heard Mr. Kandell testify on the stand this morning that some of the notations on that paper are Mr. Cohen's, that are made after March the 25th? A. That is right.

Q. So you didn't get it on the 25th of March? A. That may be quite possible. I say I do not recall.

Q. I only said that you did not get it on the 25th. A. I don't know.

Q. Well, did Mr. Cohen come up to your office to make these notations? A. Mr. Cohen was present at this meeting on March 25 and it is my recollection that Cohen made those notations of the telephone numbers before that meet-
2663 ing broke up, to get the telephone numbers of the various creditors so as to know where to contact them when he needed them.

Q. But subsequently, Mr. Kandell did give you other papers—we will forget this paper, Defendants' Exhibit F, for the time being—you did receive other papers from Mr. Kandell? A. That's right.

Q. There is no question about that fact? A. I don't think there is any doubt about that.

Q. And you didn't take that from the meeting, the papers you subsequently got, is that right? A. Yes.

Q. Are you sure about that? A. I am certain of that.

2664 Q. And they were from the file of Mr. Kandell? A. That is correct.

Q. And that was after April 25, 1938, when he was arrested? A. That is correct.

Q. And when he was asked to bring the file up to the United States Attorney's office? A. I don't know anything about that.

Q. I see. Did you know Mr. A. Rothlein? A. Yes, I know him.

Q. Do you know him? A. Yes, I do.

Q. When you asked Mr. Kandell for the file did he tell

you that the Government had also requested it prior to your request? A. No, I don't recall that. 2665

Q. You don't recall that? A. No.

Q. You don't remember, in other words? A. No, sir.

Q. Did you ask Mr. Kandell what the Government had asked him when he was arrested? A. No, I don't believe I did.

Q. You didn't know anything about it at that time, did you? A. No. I asked—here's how it happened: Mr. Cohen contacted my office and told me about the fact that Kandell was arrested in connection with the Hymowitz matter, and it was then that I asked him about it and he gave me the facts as to what had developed that day. He 2666 told me that the merchandise creditors who attended the meeting were down there and they were there all day.

Q. Are you finished? A. (No response.)

Q. I show you Government's Exhibit 15 in evidence, and ask you whether or not you recognize the enclosures of those papers (handing witness). A. Yes. One is the letter of May 13, 1937, on the—

Q. Well, just tell us generally. Is that the notice that was sent out to all the creditors in which it was stated that a purchaser was obtained, Mr. Rothlein, and that there was going to be a sale on a specific date? A. These are the papers that I referred to earlier in the testimony, which 2667 were sent by registered mail.

Q. I understand that. A. On May 13.

Q. Have I described it accurately? A. That is correct.

Q. Thank you. A. One is a letter addressed to the creditors giving them the facts in the matter. The other paper is a Bulk Sale notice, and the third paper is a consent to vacate the assignment.

Q. Did you prepare these papers? A. I did not.

Q. Did Teddy prepare them? A. Yes, he did.

Q. In your office? A. That is correct.

Q. And did he know that A. Rothlein was the purchaser

2668 when he prepared this paper dated May 13, 1937? A. He did not.

Q. He did not? A. No, sir.

Q. Well, where did A. Rothlein come from? A. That A. Rothlein—he sent those papers up in blank.

Q. In blank to whom? A. To Mr. Kandell's office.

Q. Who sent them up? A. Kandell.

Q. Did you know he was sending them up? A. I know it now.

Q. You did not know it then? A. No. I had no contact with the matter.

Q. You are out of the picture now? A. That is correct.

2669 I have been out of the picture from April 7, after I left Schulman's office.

Q. You knew what was going on? A. I doubt it. Maybe in a very casual way. It was a wholly unimportant matter. It was one out of hundreds of cases.

Q. Didn't you confer with Teddy, your brother? A. No.

Q. Concerning the various legal steps that were going to be taken? A. No, I did not.

Q. Where did you get—you say that this name "A. Rothlein" was not on the papers that were sent to Kandell? A. That is true.

2670 Q. And this is— A. And you will find—

Q. And this is dated May 13. Is that the date that it was sent out by registered mail? A. That is correct. As I understand it, that was sent out by hand to Mr. Kandell's office that day.

Q. Where did you find out that the name "A. Rothlein" had been inserted in that notice of sale? A. I don't understand the question.

Q. I will withdraw the question. In this letter that was sent out re Paul Hymowitz, dated May 13th, is a notice that "The undersigned will purchase all the mer-

chandise and all liens in and against the same for the sum of $1500 in cash." And signed "A. Rothlein." Is that correct? A. That's correct. That Bulk Sale notice so says. 2671

Q. Yes. That was dated May 13? A. That is correct.

Q. Now I show you Government's Exhibit 14, which is dated May the 19th: "We are also enclosing herewith a bill of sale of Paul Hymowitz to A. Rothlein," which is addressed to Robert Hoffman, and enclosing a bill of sale to A. Rothlein; a letter addressed to Goldman, Malter & Goldman in connection with the distribution of moneys, "Received from the sale of the assets and from the City of New York. Please be good enough to return these instruments as soon as they are executed by Mr. Hymowitz." 2672

Well, the sale—the notice of the sale to Mr. Rothlein had been sent out to all the creditors on May the 13th; that is correct, isn't it? A. That is right.

Q. And then on May the 19th you asked Mr. Hoffman to have this bill of sale of Rothlein executed; is that correct? A. That is correct. You mean my office did, when you say "you"?

Q. Well, you or your office; it doesn't make any difference. A. All right.

Q. So where did you find out about Rothlein, whether you or your office? A. The name of Rothlein came to my office either in one way or another. 2673

Q. Well, I know that. A. Either Mr. Kandell or Mr. Cohen.

Q. You didn't take it out of the air, I know that.

Mr. Corbin: I object to the continual interrupting of the answer.

Mr. Walsh: It is not continual; I will admit perhaps I did interrupt.

The Court: I will sustain the objection and allow him to answer the question. I will let him explain it.

2674 A. It came to us by telephone call from Mr. Cohen or Mr. Kandell, telling us that Rothlein is the purchaser, or when this Bulk Sale notice was sent out on May 13th and came to us on the following day, the name "A. Rothlein" appeared on the bottom of the notice, the same notice that went to all creditors, and you will find that on May 19th, six days later or five days later, the bill of sale was prepared with A. Rothlein as the purchaser, and that bill of sale was sent up to Mr. Robert Hoffman for execution by his client.

Q. So your office received the notice on May the 13th by registered mail and that is the first time you found out
2675 that A. Rothlein was supposed to be the purchaser? A. We wouldn't receive it by registered mail. That notice was sent out to all creditors by registered mail, but as I say—

Q. As a matter of fact, you compared it, didn't you? A. We did.

Q. With "A. Rothlein" out, you say? A. That is correct; in blank.

Q. Now you say either Cohen or Kandell put the name "A. Rothlein" in it? A. That is correct.

Q. Was the Underwriters Salvage Company ever used? A. In this matter?

2676 Q. That is what we are talking about. A. No; not that I know of.

Q. Do you remember when Mr. Schulman was on the stand I asked him certain questions as to what your function was going to be and will you say whether or not it was or was not—and so that I will not misquote I will be bold enough to read you what he said.

Mr. Corbin: I object to it as immaterial.

The Court: Yes. I will sustain the objection.

Q. Well, were you going to work out the mechanics of

this particular situation? A. No. My brother Teddy was 2677
to handle it.

Q. Your brother Teddy was to handle the mechanics? A. That's correct.

Q. Did you discuss that with Mr. Schulman and Teddy at the conference? A. What conference?

Q. Who was supposed to say they were going to work the mechanics? A. You mean in the conference at Mr. Schulman's office?

Q. Yes. A. At Mr. Corbin's office or Mr. Schulman's office?

Q. At Mr. Corbin's office. A. You are talking about this conference here about a month ago? 2678

Q. Yes. A. What is the question?

Q. Did you at that time decide—well, I will withdraw the question. Going back, Mr. Goldman: There has been introduced in evidence a letter dated April the 1st in which you asked your client to sign a claim against the estate. Do you remember that? A. I remember it.

Q. That was introduced through Mr. Teddy Goldman? A. Yes, I saw that letter at this conference and I saw it before.

Q. Had you ever communicated or did you ever know that Mr. Schulman had communicated with the office, yourself and your brother prior to April the 2nd, 1937? A. 2679
From what I learned, he did not.

Q. Well, do you remember this question being asked you in the grand jury on January the 29th, 1940—

Mr. Corbin: What page?

Mr. Walsh: Page 187.

Q. I am going to read you a little so that you will get the context and then you will be able to follow more clearly:

"April 1 we sent a proof of claim to our client, Mr.

2680 Levy, and asked him to execute it and return it. The form of the proof of claim was a short form proof of debt which it was necessary to have signed and executed under oath, with a statement and filed with the assignee. That was April 2—that was Thursday."

Mr. Walsh: May I see that exhibit?

Mr. Corbin: If we find it.

Q. Well, in any event—

Mr. Corbin: Anything we have here you can have.

Mr. Walsh: I understand, Mr. Corbin.

2681

Q. In any event, your client did not execute that under oath; do you remember that? A. I don't know. I will tell you, Mr. Walsh—

Mr. Corbin: Is this it (handing to Mr. Walsh)?

A. (Continued) If you will look at the file in the assignment proceedings you will find in all probability our claim on file and you will find the date of its execution.

Q. Well, I will withdraw the question. It isn't important. I just wanted to refresh your recollection. Do you think it is important?

2682

Mr. Corbin: I think it is important to have everything that is available.

Mr. Walsh: We understand that.

Mr. Corbin: Either court records or in our files.

The Court: Very well. He has withdrawn the question so, gentlemen, proceed.

Mr. Walsh: I have withdrawn the question because it is of no importance. I don't accuse you, Mr. Corbin, of holding anything back, and never have accused you.

Q. And then it goes on—I just read it to help you refresh your recollection for whatever importance it was— "Q. What happened next?" And before I ask you the question, did you hear your brother testify yesterday? A. I did. 2683

Q. To the effect that he had not communicated with Mr. Schulman prior to April the 2nd, 1937? A. I did.

Q. Was this question asked you and did you make this answer:

"Q. What happened next? A. April 2nd we received a telephone call from Mr. Schulman, a lawyer, who had been calling the office during the week about the fact that some of these creditors that had attended the meeting had had difficulty in getting to the place." 2684

Do you remember that question being asked you— A. I did.

Q. (Continued) And do you remember making that answer? A. Yes, sir.

Q. And had Mr. Schulman been calling the office prior to April 2nd? A. That was my impression at the time.

Q. And I want you to listen to the next question too: "Q. Did you have this conversation with Mr. Schulman? A. No, but I know that took place." A. That is correct.

Q. I want to be fair and read that too. A. Yes.

Mr. Corbin: Just so much, Judge; whether he wants to be fair, I move to strike that remark. 2685

The Court: Yes. I will sustain the motion.

Q. Were you asked that question and did you make that answer? A. What question was that? Are you talking about the first or second?

Q. "Q. Did you have this conversation with Mr. Schulman? A. No, but I know that took place." A. Yes, that's a correct answer.

Q. How did you know it took place? A. Well, I say I

2686 was under the impression that he had called in connection with the failure of Hoffman to contact creditors.

Q. Who told you it took place? A. Well, I assume I got that information somewhere. I don't know specifically where.

Q. Well, your brother Teddy was in charge of the matter, you said? A. That is correct.

Q. Would it be he who told you that Mr. Schulman had been calling up? A. That is correct. It is quite likely, Mr. Walsh, that from the period of time I left that meeting on March 25 and the time that these creditors were to look at this stock, and have their respective purchasers, that
2687 during the intervening few days that probably three or four days up to and including April 2 that we are referring to, that Teddy may have mentioned to me, quite likely, and it is quite likely not because I haven't any definite recollection about it, because it is an unimportant detail as far as this matter or general matters are concerned. He may have mentioned the fact that there was difficulty. That was when I went before the grand jury and I told them what was my impression. You must remember that when we got together with this conference we had all the defendants there and we tried to find out what the actual
2688 facts were.

Q. Well, this was prior to the conference with Mr. Corbin. That was— A. Yes. That was in January, 1940. where—

Q. That is the time you had conferred with your brother before you appeared before the grand jury? A. Oh yes. I talked the matter with him.

Q. Did you discuss the matter fully with your brother before you went to the grand jury in January of this year? A. As fully as we could, consistent with the fact that the other people were not talked to, as I then—

Q. What other people were not talked to? A. I am

talking about Mr. Kandell; I am talking about Mr. Schulman. 2689

Q. That is the reason I asked you the question before: Had you conferred with Mr. Schulman prior to the time that you appeared before the grand jury? A. When you say "confer" I may have telephoned him; I may have come to his office.

Q. Well, did you speak to him? A. I haven't any recollection in that respect.

Q. Did you speak with Mr. Kandell? A. Maybe and maybe not.

Q. Well, you got the file from Mr. Kandell, did you not? A. In 1938. 2690

Q. Didn't you have the file with you all the time? A. The 1938?

Q. Yes. A. I may have returned it and we may have kept it in the office. I don't recall.

Q. Well, you have it now, don't you? A. His file? No. I think Mr. Mintzer has it.

Q. But it was down there at the conference. Who brought that down there? A. Mr. Mintzer. I don't know what he brought. He brought with him his own file.

Q. When did you return the file to Mr. Kandell after 1938? A. I haven't any definite remembrance on that question. I don't recall that. He may have called for the file and it may have been returned to him by somebody in the office in authority. 2691

Q. Who is in the office "in authority"? A. Mr. Malter, my brother, the managing attorney, my secretary. They would—almost anyone of them usually would know whether they could give up a particular paper that is in the office.

Q. May I ask you again, did you confer with Mr. Kandell prior to the time that you appeared before the grand jury in January of 1940? A. When you refer to a conference such as took place at Mr. Corbin's office, I say, "No." I

2692 may have telephoned him and asked him some questions. I may have sent for him.

Q. Did you speak to him concerning the Hymowitz case prior to the time that you appeared before the grand jury in January, 1940? A. I say I may and I may not.

Q. You don't remember at this time, is that your answer? A. That is correct.

Q. Did you speak to Mr. Schulman or telephone him or talk to him over the telephone prior to the time that you appeared before the grand jury in this case concerning the Hymowitz case? A. I may have called him and I may not.

Q. You have no present recollection? A. That is correct.

2693 Q. And you cannot remember at all now, is that correct? A. No, sir; that is correct.

Q. Did you confer with your brother Teddy Goldman? A. I did.

Q. Before you appeared before the grand jury? A. I did. I conferred with him at length. We went over the matter in great detail.

Q. You remember that you sued Mr. Hoffman for one-third of the $300 that he had been given as his work in the assignment proceedings; is that correct? A. My firm brought on a proceeding in the assignment proceedings—

Q. Well, who authorized it in your firm? Who is the 2694 senior partner? A. Well, Mr. Malter and I are on an equal standard.

Q. Well, in this matter who is the senior partner? Malter had nothing to do with this, did he? A. As far as handling the matter before the referee, yes, he did.

Q. I understand that, but did you authorize the suit for one-half of $300? A. Mr. Malter was writing letters to Mr. Hoffman in the vein of "Dear Bob."

Q. I asked you whether you authorized the institution of a suit to obtain one-half of the fee that had been allowed by the Court to Hoffman. A. I think we discussed it in the office and we agreed to do that.

Q. Who is "we." A. Mr. Malter, my brother Teddy and myself. 2695

Q. And you did institute such a suit? A. We brought a proceeding—a summary proceeding in the assignment proceeding and when the matter came up—

Q. And your brother testified there, did he not? A. Yes, sir.

Q. Under oath? A. He did.

Q. And after he came back did he tell you what he testified to? A. Yes.

Q. Did he tell you that he denied that he had seen the petition in bankruptcy? A. No, he didn't tell me any of the details. He just had— 2696

Q. Well, I asked you what he did tell you. A. What he told me was that Hoffman had opposed the motion, had taken a position that we—

Q. Wait a second. I asked you a question.

Mr. Corbin: Let him answer.

A. Don't you want me to tell you what he told me?

Q. Did Teddy testify? A. He did.

Q. And did he tell you that he had testified that he had not seen the petition that was filed in the Hymowitz case? A. I don't recall that. 2697

Q. You don't recall that? A. No. I don't think that was in the—

Mr. Corbin: Just a moment.

The Witness: Do you want me to tell you what he told me?

The Court: Your lawyer said, "Just a moment."

The Witness: I am sorry.

Mr. Corbin: I was going to object on the ground that that is not the testimony and that it is not confirmed by the transcript that Government counsel read from.

2698 The Court: I will sustain the objection.

Q. Did you have a conference with your brother after he appeared and testified at the first hearing before Referee Marks? A. No. I think we had—I think that there was another meeting or an adjournment and then Mr. Malter, my brother and I discussed the matter and determined that in view of the fact that Mr. Hoffman had apparently a good technical objection to our application in that our co-retainer stipulation was signed on June the 1st, 1937, that we would not be entitled to any compensation for services rendered by our office prior to that day, and in view of the
2699 fact that all of the work done by your office was before that day, and I don't think—I think little, if any, work was done after that day, he apparently had a good technical objection, and in addition to that and more important than that reason was the fact that the matter was taking up so much time already—I think they had spent several hours there before the referee or were required to come back on some adjourned date—they had to go back and spend some more time, and it meant if we were thoroughly successful we would get 150, and it did not look as though we would get 150 in view of his apparent valid objection, and there was uncertainty how much we would receive and maybe receive
2700 little, if anything, so we decided to abandon that proceeding for expediency, and so it was not good business to waste any further time, to waste time on what was possibly a loss of a lawsuit in trying to reclaim this money which we were entitled to and which we were allowed by order of the Court.

Q. Is there anything else? A. That's all.

Mr. Corbin: About what?

Mr. Walsh: That he wants to explain.

Mr. Corbin: Now just a moment.

A. I answered. 2701

The Court: Very well, gentlemen. Proceed with the next question. He has answered the question. You asked him what his brother Teddy told him and he told you, so proceed.

Q. When was the retainer signed, did you say? A. The retainer was signed, if my memory serves me well, on May 15, 1937, but it wasn't filed till June 1, 1937.

Q. Well, didn't you know even before you instituted this suit that Hoffman had the same technical objection, as you call it? A. Frankly, we didn't expect him to take advantage 2702
of us in that respect.

Q. As a matter of fact, isn't the reason that you discontinued that action and signed or had the stipulation appear on the record was because you were afraid that Mr. Hoffman would take the stand and testify as he had in this court? Isn't that the reason that you discontinued that action? A. No, absolutely not, and if you will refer to the record in the assignment proceedings you will find a statement that was made before the referee, is in substance, I think, what I told you today.

Q. Wasn't the case discontinued during the course of the cross examination of Teddy Goldman? A. It was not. 2703

Q. It was not? A. Let's have the record.

(Handed to the witness by Mr. Walsh.)

Mr. Walsh: I am handing him the stenographic minutes before Referee Marks.

The Court: Gentlemen, I think we are getting rather far afield from this case. I am not going to try that case that was tried before Referee Marks.

Mr. Walsh: Well, I will withdraw the question then.

The Witness: May I—

2704 The Court: I will say this: This part of it would be competent if such a thing happened: If there were any statements made by anybody contrary to what has been testified on the stand by any witness who testified in that case, those contrary statements would be admissible; but as to what was generally done there I do not think has any connection with this case.

The Witness: Will your Honor permit me to—

The Court: Yes. I will permit you to go briefly—either side.

2705 Q. May I have my question answered first, whether or not the hearing was adjourned at that time during the cross examination of Teddy Goldman? A. It was not.

Mr. Corbin: The question is irrelevant and immaterial.

A. It was not. Now let me read this to you. This is the record, Mr. Walsh.

Q. Well, just look at the last part. Who is on the stand when it was adjourned?

The Court: Just a moment. An objection was
2706 made there. Let me see what I want to rule on that objection.

Q. You say he was not? A. Refer—

The Court: Just a minute.

The Witness: I am sorry, your Honor.

The Court: He has said that it was not. That was in before the objection, at least before it was registered. I am going to sustain the objection to that.

Mr. Walsh: Will you hear me on that for a mo- 2707
ment, if your Honor please?

The Court: No, I don't care to hear you on that, Mr. Walsh. It is going also into the trial of that case. That is as far as I am going to permit that case to come into this one. If any witness—I don't care who you are—for either side—made a statement in the case contrary to what his testimony is on the present witness stand, then you can introduce that part for the purpose of contradicting the witness. I don't care what was the outcome of that lawsuit down there, or when it was terminated or why it 2708
was terminated. We are not going to try it here as a reviewing court or any other court. The rule is if a witness makes a statement different on another occasion, he may be contradicted by it. That is as far as I am going to permit you to go into that record.

Q. Mr. Goldman, if you had merely represented Mr. Harry Levy as a creditor in this proceeding, without becoming co-attorney, would you have received a fee? A. In what proceeding? You are talking about the vacatur of the assignment?

Q. In the estate. You represented the creditor Harry 2709
Levy and submitted his claim. Would you have received a fee from the estate? A. In the vacatur of the assignment, whatever the services were rendered in connection with it, we would be entitled to a fee.

Q. That is because you were in there as co-attorney? A. No, sir; because of the fact that we were performing services generally beneficial to the creditors, and the Appellate Division in the Second Department determined that question, that where an attorney doesn't represent—

Mr. Walsh: I object to what an attorney may—

The Court: I will sustain the objection and ex-

2710 clude that part as to what the Appellate Division did. I will let his answer remain that he would have been entitled to a fee.

Q. Now you say you discussed this situation; before you appeared before the grand jury in January of 1940, with your brother? A. I did.

Q. Did you discuss with him whether or not the petition in bankruptcy had been filed or had been prepared and drawn up in your office? A. I did.

Q. You did? A. I did.

Q. Before you appeared? A. That's correct.

2711 Mr. Walsh: That is all.

Redirect examination by Mr. Corbin:

Q. And did Teddy tell you at that time or say that it had not been prepared in your office? A. He was certain about it at that time.

Q. Did you ever hear that anyone had made or received any bid in the sum of $1900 for the Hymowitz stock? A. I never did.

Q. Did you ever hear of anyone having received any bona fide offer of $1900? A. I never did.

2712 Q. Reference was made on cross examination to "two funds". Was there anything said at any time in your presence or hearing about two prices being received for the stock—

Mr. Walsh: I object to the form of that question.

The Court: I sustain the objection, not upon the ground as to form, but upon the ground that it has already been gone into on direct examination. You went into that this morning.

Mr. Corbin: Yes, I think that is so.

Here is one thing, Judge, I think I omitted on direct.

The Court: Very well. 2713

Q. There is some testimony here, and I call it to your attention preliminary, coming from Hoffman to the effect that on April 7th when you left the conference at Schulman's office, he, Schulman, was out in the hall with you, and then, upon his return to his office where Hoffman was, said in words or effect, "Goldman is afraid to talk with you about the matter."

Did you have any talk with Mr. Schulman outside the office on that occasion? A. We did not. When I left he and Hoffman stayed in his room.

Q. And did you, either outside or inside or anywhere on that occasion or any other occasion say to Schulman in words or effect— 2714

Mr. Walsh: I object to this as improper redirect examination, if your Honor pleases.

The Court: Yes. My recollection is that that was gone into on direct examination, Mr. Corbin.

Mr. Corbin: No, I didn't touch on it.

Mr. Walsh: Well, it isn't proper.

The Court: If you have overlooked it I will let you reopen it.

Mr. Walsh: Then I will withdraw my objection.

Mr. Corbin: That is what I just said, that I overlooked this on the direct: 2715

Mr. Walsh: Then I will withdraw my objection.

The Court: Very well.

Mr. Corbin: To keep the continuity of the record, may I have the question as far as I went?

(Question read.)

Q. (Continued) "I am afraid to talk with Hoffman on this subject"? A. I never did.

Q. Or that you were amenable to going through with any improper settlement? A. I did not.

2716 Mr. Corbin: That is all.

Mr. Walsh: I have no further questions.

The Court: Stand aside.

(Witness excused.)

The Court: Who is next?

Mr. Corbin: We rest.

The Court: The defendant rests.

Mr. Fielding: The defendant Schulman rests.

The Court: Anything in rebuttal?

Mr. Walsh: May we take a three-minute recess at this time?

The Court: Yes, we will take a short recess.

2717 (Short recess.)

Mr. Walsh: If your Honor please, the government rests.

The Court: Very well. You may proceed with the summations.

Mr. Corbin: May it please the Court, for the record I move on behalf of my clients for a dismissal on the same grounds as stated at the close of the government's case, and an exception.

The Court: Yes. Very well. Let the motion be noted and it is denied.

2718 Mr. Fielding: And the same motion is made on behalf of the defendant Schulman.

The Court: Yes. Let the motion be denied.

Mr. Fielding: And an exception.

The Court: An exception to all parties.

Mr. Corbin: I suppose either now or later that you will tell the jury that your decision on those motions doesn't indicate any opinion on that?

The Court: Yes. I will do that at the conclusion —I will do that in my general charge, or I might do it now, that the overruling of those motions for a directed verdict has no effect one way or the other.

and is not intended to indicate how the Court feels as to the guilt or innocence of the defendants. That is simply a rule of law that the Court is of the opinion that the motions for a directed verdict should be denied. 2719

(Whereupon Mr. Fielding at 3.35 P. M. summed up the case to the jury on behalf of his client.)

The Court: I believe, ladies and gentlemen, we will take a recess at this time. We will not have any other summations this afternoon. It is now 4.20, and we will take a recess until 10 o'clock tomorrow. Be back at 10 o'clock tomorrow.

(Adjourned to July 26, 1940, at 10 o'clock A. M.) 2720

UNITED STATES OF AMERICA

—against—

MORTON L. GOLDMAN, et al.

New York, July 26, 1940;
10:00 A. M.

TRIAL RESUMED.

(Mr. Corbin made his summation to the jury.)

(During Mr. Corbin's summation the following proceedings were had:) 2721

Mr. Corbin: * * * There have been rumors around here that an innocent man cannot be acquitted here.

Mr. Walsh: Now I object to that, what the rumors are. There is no evidence to that effect.

The Court: Yes. I think the rumors are immaterial. Of course counsel is permitted wide latitude to talk on the evidence or to comment on the explanations on the evidence, but as to rumors as to whether or not a good many convictions or a good many acquittals are had I don't think are material.

2722 (Mr. Corbin continued his summation during which the following proceedings were had:)

Mr. Corbin: * * * Conversation taken through the microphone in the hole in the wall.

Mr. Walsh: If your Honor please, may I interrupt at this time, that conversation was not taken through the microphone in the hole in the wall.

Mr. Corbin: Oh yes; that is what they say.

The Court: The jury remembers the testimony. It is the particular function of the jury to remember what the testimony is.

2723 (Mr. Corbin continued his summation to the jury during which the following proceedings were had:)

Mr. Corbin: * * * During an argument they might have had in the library—

Mr. Walsh: That isn't in evidence, the argument they had in the library.

The Court: I will instruct the jury that counsel's recollection of the testimony is not controlling, but the jury finds the facts from all the evidence. You are the sole judges of the facts, members of the jury, as to what the evidence is and what the true facts are.

2724 (Whereupon Mr. Corbin concluded his summation to the jury.)

The Court: We will take a five-minute recess.

(Short recess.)

(Mr. Walsh summed up to the jury, during which the following proceedings were had:)

Mr. Walsh: * * * But they did not tell you what Judge Coxe also did, and because it isn't in the record I can't either. But I am not going into any defense of Judge Coxe.

Mr. Corbin: I object to the insinuation that there is something that Judge Coxe did or said that isn't in the record.

The Court: I instruct the jury that you make up your

verdict from the testimony and the reasonable inferences 2725
therefrom or from any insufficient amount of evidence that the defendants are guilty beyond a reasonable doubt. Arguments of counsel are made to aid the jury in arriving at a just verdict, but you will consider only such testimony as has been introduced in evidence and reasonable inferences therefrom. What testimony was ruled out you will not consider. You will consider no inferences from any testimony that was ruled out or any motive that prompted the Court to rule that they be ruled out. You may proceed.

(Mr. Walsh continued his summation to the jury during which the following proceedings were had:)

Mr. Walsh: * * * "That is why I was fit to be tied." 2726

Mr. Corbin: And the next one.

Mr. Walsh: And then he continues on—

Mr. Corbin: Will you read that next question there?

The Court: Very well, gentlemen. Just one at a time.

Mr. Walsh: And then he was asked—

The Court: If he goes outside of the record, you may object but I do not like attorneys to get into an argument.

Mr. Walsh: This is the record I am reading from.

The Court: I believe, gentlemen, we will take a recess until 2:15.

(Recess to 2:15.) 2727

AFTERNOON SESSION:

The Court: Is everybody present? Is Mr. Schulman present?

Mr. Fielding: Yes.

The Court: Very well, you may proceed, Mr. Walsh.

(Mr. Walsh continued his summation to the jury during which the following proceedings were had):

Mr. Walsh: * * * We have duties every day in the week, and it is nothing new, and I ask you to just give this case

2728 your careful consideration, and by your verdict in this case I hope that you will not be the ridicule of the community who are waiting for this nor give indulgence to the infraction of the divine commandment, "Thou Shalt Not Steal." Thank you.

Mr. Corbin: If your Honor please, I have one exception to note, and that is to the last statement by counsel to the jury that they should not by their verdict be the ridicule of the community who are waiting to receive their verdict. I except to that as not legitimate argument by a representative of our Government, and I ask that the jury be instructed now to disregard it.

2729 The Court: I sustain the motion and I instruct you now, ladies and gentlemen of the jury, that what the public thinks of this case is entirely immaterial and should be disregarded by you.

(Requests to charge respectfully submitted by the defendants Martin M. Goldman and Theodore Goldman):

The defendants Martin M. Goldman and Theodore Goldman, respectively, request the Court to charge the jury as follows:

2730 1. An assignee is a trustee for creditors. If an assignee or his attorney is in truth representing the assignor he cannot at the same time properly represent the creditors. At least, the likelihood of a conflict of interest in the dual representation is so great as to make it entirely proper for creditors to insist, in such case, upon the right of creditors to control the administration.

2. It would also be entirely proper and would not constitute a crime for creditors to advise an assignee's attorney, in such case, that they would file a petition in bankruptcy, if necessary, to prevent retention of control by such an assignee or such an attorney for an assignee.

Requests to Charge on Behalf of Defendant Goldman.

3. The filing of a petition in bankruptcy for the very purpose of removing control from the hands of a representative of the debtor would not be a crime. Such purpose is not a fraudulent purpose. 2731

4. Such purpose would still not be a fraudulent purpose even if the attorney filing the petition expected to be compensated for the services rendered in the course of the proceedings, whether such compensation was anticipated either from his own client, or by way of allowance out of the estate.

5. On a bulk sale and settlement with creditors, attorneys who perform services beneficial to the creditors as a whole are entitled to be compensated out of the estate 2732 and such compensation is a part of administration expenses.

6. It was the duty of these defendants at all times to so act as to promote and further the interests of their client, the creditor Harry Levy, and if you find from the evidence that the bankruptcy petition was filed and dismissed in the honest belief on the part of these defendants that their client's interests would be promoted by a bulk sale disposition of the assets, then you must acquit.

7. It is undisputed evidence in this case that the Goldman firm was authorized to act on behalf of their client Harry Levy in respect of both the filing and the dismissal of the involuntary petition in bankruptcy. 2733

8. The involuntary petition in bankruptcy could have been dismissed by the Court at any time on notice to the creditors, whether or not it contained an allegation of the assignment for the benefit of creditors.

9. Hoffman's testimony, even on the basis of his own version, that he agreed with Schulman on April 5 to divide a secret part of the sale price, would place him in the class of an accomplice, and require that his entire testimony be viewed with suspicion and accepted only with caution. (See Record, pp. 90-91.)

Requests to Charge on Behalf of Defendant Goldman.

2734 10. Hoffman's own personal pecuniary interest in the Hymowitz case also requires consideration on the question of his credibility.

11. The entry into Schulman's private office on the night of April 6 without his knowledge or consent was an illegal act and a violation of his constitutional rights.

12. Any evidence obtained by such illegal invasion must be disregarded.

13. The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded.

2735 14. Insofar as the defendant Martin Goldman was present at any meeting in Schulman's office where such devices were used by Government agents to detect the conversation, his right to privacy was equally infringed.

15. Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded.

16. In determining what weight you will give the testimony of the FBI agent Turner, you may consider the undisputed fact that on the night of April 6 he entered Schul-
2736 man's private office without the latter's knowledge or consent and installed a carbon disc microphone in a hole in the wall.

17. Before you may convict any defendant in this case you must be satisfied by the evidence and beyond every reasonable doubt that he conspired fraudulently to participate in a secret profit to be derived from a theft of part of the actual selling price of the assets.

18. A mere agreement among the attorneys on the amount each should receive for services is neither fraudulent nor a crime.

Requests to Charge on Behalf of Defendant Schulman.

(Requests to charge respectfully submitted by the defendant Jacob P. Schulman): 2737

The defendant Jacob P. Schulman respectfully requests the Court to charge the jury as follows:

1. That it is undisputed evidence in this case that Schwartz & Zuckerman and Ribach & Mantis authorized Jacob Schulman to sign the petition in bankruptcy as their attorney-in-fact.

2. That the filing of the petition in bankruptcy against Hymowitz by Jacob Schulman as attorney for petitioning creditors transferred jurisdiction over this estate to the United States District Court and superseded the assignment proceeding brought under the law of the State of New York. 2738

3. That the filing of the petition in bankruptcy against Hymowitz gave to the creditors of Hymowitz through their duly elected representative the right to liquidate the estate to the exclusion of the assignee.

4. That if Jacob Schulman, as attorney for petitioning creditors, in not opposing the dismissal of the petition in bankruptcy did so in the belief that it would be helpful to the creditors in obtaining a bulk sale, such action on his part is not for a fraudulent purpose.

5. That the alleged conspiracy to set aside a secret fund out of the estate assets of $400 was inaugurated on March 25, 1937 at a meeting of creditors which Jacob Schulman did not attend and who could have had no knowledge of it at that time. 2739

6. That the testimony of Jacob Schulman as to what transpired in his office in the conferences with Robert Hoffman and Martin Goldman is clearer and more complete evidence than the transcripts of those conversations obtained by the listening device employed by the FBI.

7. That the entry of the Government agents in Schul-

2740 man's office on April 6, 1937, was a trespass and was an invasion of Schulman's constitutional rights.

8. That the jury should disregard any evidence obtained by this illegal entry.

9. That the fixation of any listening device and the accompanying apparatus on the outside wall of Schulman's office by which conversations in Schulman's office could be heard and recorded without his knowledge and consent was an invasion of the constitutional rights of Schulman. Evidence thus obtained should be disregarded.

10. It is not unlawful nor fraudulent for attorneys who have rendered legal services to an insolvent estate to confer
2741 among themselves and to determine how they shall be remunerated nor can such acts be considered a criminal conspiracy.

Charge of the Court.

The Court: You shall make up your verdict from two things and two things alone. One is the facts in the case. You determine what the facts are from the testimony delivered upon the witness stand, and the other is, that applying the law to those facts you shall determine whether or not any
2742 of these defendants are guilty or innocent. Those things and those alone are the things that shall influence you and guide you in arriving at a verdict.

The burden of proof is upon the Government to prove the defendants guilty beyond every reasonable doubt. If the Government does that it is your duty to convict them. If the Government fails to do that it is your duty to turn them out. You shall be influenced by nothing in the world other than the law and the evidence. You shall not be influenced by any sympathy or favoritism. Nor shall you be influenced by any ill will, any malice, any invective or

anything that may have been said that was not borne out 2743
by the evidence because the duty of the jury and the duty of the Court is to act upon the evidence and the law and those things alone. If the defendants have been proven beyond every reasonable doubt you should not hesitate one minute to convict them. If, on the other hand, the defendants have not been proven guilty beyond every reasonable doubt you should not hesitate one minute to turn them loose. Let your conscience be your guide in doing that which is right, that is, following the law and the evidence in the case.

The defendants in the case are lawyers. You shall not 2744
let that influence you one way or the other. If you have particular friends who are lawyers or friends of these lawyers that you would like to favor just because of the friendship, that would be wrong. On the other hand, if you have any ill-will or any malice toward the law profession or toward lawyers in general you should totally disregard that and try this case just as though they were three insignificant defendants charged with crimes, and if they have been proven guilty beyond a reasonable doubt then you should so find; but if they have not been you should find them not guilty.

The defendants are charged with a conspiracy to violate 2745
the Bankruptcy Act. I will not define a conspiracy right at this time but will later on. Upon the trial of that issue, upon the trial of that charge the defendants are presumed to be innocent. They start out in the trial of this case clothed with the presumption of innocence. That presumption follows them throughout the entire trial of the case until it is overcome by proof which convinces beyond every reasonable doubt their guilty. If the proof convinces beyond every reasonable doubt of their guilt, then the presumption of innocence fades away and it is your duty to act upon the proof. But if the proof does not convince beyond every

2746 reasonable doubt then it is your duty to indulge that presumption of innocence and acquit them.

Several instructions have been requested by the defendants and by the Government, some of which I will give and some of which I will refuse, but these instructions that have been requested by the defendants which I will give are just as fully the law as if I had given it to you without being so requested to do. In other words, every instruction that has been requested which I shall read to you as given it is your duty to take that as the law in the case and to follow it just as though I had given it without being requested. However, these instructions will not conflict with
2747 any other instructions that I will give you later on.

All the instructions are taken as a whole and explain the various questions that are involved in the case, so before proceeding to the general charge I will give you these instructions as the law in the case; and they are the law. The instructions requested by Mr. Martin M. Goldman and Theodore Goldman I give as follows:

1. An assignee is a trustee for creditors. If an assignee or his attorney is in truth representing the assignor, he cannot at the same time properly represent the creditors. At least, the likelihood of a conflict of interest in the dual
2748 representation is so great as to make it entirely proper for creditors to insist, in such case upon the right of creditors to insist, in such case, upon the right of creditors to control the administration.

2. It would also be entirely proper and would not constitute a crime for creditors to advise an assignee's attorney, in such case, that they would file a petition in bankruptcy, if necessary, to prevent retention of control by such an assignee or such an attorney for an assignee.

3. The filing of a petition in bankruptcy, for the very purpose of removing control from the hands of a repre-

sentative of the debtor would not be a crime. Such purpose 2749
is not a fraudulent purpose.

4. Such purpose would still not be a fraudulent purpose, even if the attorney filing the petition expected to be compensated for the services rendered in the course of the proceedings, whether such compensation was anticipated either from his own client or by way of allowance out of the estate.

5. On a bulk sale and settlement with creditors, attorneys who perform services beneficial to the creditors as a whole are entitled to be compensated out of the estate and such compensation is a part of administration expenses.

6. It was the duty of these defendants at all times to 2750
so act as to promote and further the interests of their client, the creditor Harry Levy, and if you find from the evidence that the bankruptcy petition was filed and dismissed in the honest belief on the part of these defendants that their client's interests would be promoted by a bulk sale disposition of the assets, then you must acquit.

7. It is undisputed evidence in this case that the Goldman firm was authorized to act on behalf of their client Harry Levy in respect of both the filing and dismissal of the involuntary petition in bankruptcy.

8. The involuntary petition in bankruptcy could have 2751
been dismissed by the Court at any time on notice to the creditors, whether or not it contained an allegation of the assignment for the benefit of creditors.

9. Hoffman's testimony, even on the basis of his own version, that he agreed with Schulman on April 5 to divide a secret part of the sale price, would place him in the class of an accomplice, and require that his entire testimony be viewed with suspicion and accepted only with caution.

10. Hoffman's own personal pecuniary interest in the Hymowitz case also requires consideration on the question of his credibility.

2752 11. The entry into Schulman's private office on the night of April 6 without his knowledge or consent was an illegal act and a violation of his constitutional rights.

12. Any evidence obtained by such illegal invasion must be disregarded.

That instruction particularly I call your attention to as given, and specifically I instruct you that any evidence that might have been obtained by going into Schulman's office was illegal. I recall no evidence whatsoever that was permitted to go in that was obtained by any entry into Schulman's office, but if any crept in, then you would disregard that. I permitted testimony to be shown that an
2753 entry was made into Schulman's office and that was shown by the defendants upon the theory and for the purpose of affecting, if you thought it ought to be affected, the weight and credibility that was to be given to the witnesses for the Government who made the entry therein. That was the only purpose that that was permitted to be shown, that the office of Schulman was entered, so with that explanation I again charge you that if any evidence was obtained by the actual entry of Government agents into Schulman's office, then you would disregard that testimony because the entry was not lawful.

2754 I charge you at this time, ladies and gentlemen—I will digress long enough while it is on my mind, digress from these requested instructions——that you are not concerned with how the evidence was obtained, that is, evidence that was admitted by the Court. It is your duty to consider every piece of evidence that was admitted by the Court. You are not concerned with how it was obtained and whether it ought to be the law that it was obtained that way or not. It is your duty to consider the weight of it and what belief you will give the witnesses. All the evidence that the Court admitted before you is competent evidence, and it is your duty to consider, and if you believe it, act

upon it, but whether you believe it or disbelieve any evi- 2755
dence is entirely for you.

Instruction 13 I refuse.

Instruction 14 I refuse.

Instruction 15 I refuse.

Instruction 16 I give.

In determining what weight you will give the testimony of the FBI agent Turner, you may consider the undisputed fact that on the night of April 6 he entered Schulman's private office without the latter's knowledge or consent and installed a carbon disc microphone in a hole in the wall.

17. Before you may convict any defendant in this case 2756
you must be satisfied by the evidence and beyond every reasonable doubt that he conspired fraudulently to participate in a secret profit to be derived from a theft of part of the actual selling price of the assets.

18. A mere agreement among the attorneys on the amount each should receive for services is neither fraudulent nor a crime.

Instructions requested by the defendant Jacob P. Schulman I give as follows:

1. That it is undisputed evidence in this case that Schwartz & Zuckerman and Ribach & Mantis authorized Jacob Schulman to sign the petition in bankruptcy as their 2757
attorney-in-fact.

2. That the filing of the petition in bankruptcy against Hymowitz by Jacob Schulman as attorney for petitioning creditors transferred jurisdiction over this estate to the United States District Court and superseded the assignment proceeding brought under the law of the State of New York.

3. That the filing of the petition in bankruptcy against Hymowitz gave to the creditors of Hymowitz through their duly elected representative the right to liquidate the estate to the exclusion of the assignee.

2758 4. That Jacob Schulman as attorney for petitioning creditors in not opposing the dismissal of the petition in bankruptcy did so in the belief that it would be helpful to the creditors in obtaining a bulk sale, such action on his part is not for a fraudulent purpose.

No. 5 I refuse.

No. 6 I will give, with an explanation:

That the testimony of Jacob Schulman as to what transpired in his office in the conferences with Robert Hoffman and Martin Goldman is clearer and more complete evidence than the transcripts of those conversations obtained by the listening device employed by the FBI.

2759 That is true. The conversation as narrated by the defendant Jacob P. Schulman is more complete and clearer than the transcript, if believed, and whether or not it is to be believed is entirely for you to determine. And by me making this comment I do not mean to intimate that I believe it or I disbelieve it. That is your province entirely, as to what weight you will give to the testimony of any evidence.

While his narration of what transpired is much clearer, much more complete because it is shown that parts of the conversations as narrated by the stenographer who took it, as shown upon its face, were incomplete. But 2760 if taken with all of the other evidence in the case, with all the facts and circumstances in the case, it convinces beyond every reasonable doubt the guilt of the defendant, then it is your duty to act upon it. But if, upon the other hand, you have a reasonable doubt as to whether he is guilty or not, it is your duty to acquit him.

No. 7: That the entry of the Government agents in Schulman's office on April 6, 1937, was a trespass and was an invasion of Schulman's constitutional rights.

That is correct. It was illegal for the entry to be made into his private office on the evening of April the 6th.

and any testimony, if any crept in, by reason of that entry into the office, should be disregarded but all other evidence that I have permitted to go in is competent and is to be considered along with all of the evidence in the case. 2761

No. 8: That the jury should disregard any evidence obtained by this illegal entry.

No. 9 I refuse.

No. 10 I give: It is not unlawful nor fraudulent for attorneys who have rendered legal services to an insolvent estate to confer among themselves and to determine how they shall be remunerated nor can such acts be considered a criminal conspiracy.

Ladies and gentlemen, those instructions I have read, along with the remainder of the instructions that I shall give you and what I gave prior to reading those, will all constitute the law of the case. 2762

As related in the instructions that I have given at the request of the defendants, it is not unlawful for attorneys to charge fees. It is not unlawful for attorneys to have conferences and to make an honest effort to determine what will be the best benefit or for the best interest of their clients, as long as they are acting within the law and along the lines that are approved by the law. Creditors have a right to appear when an assignment has been made for the benefit of creditors and to object to the assignee acting; they can make application to the Court to have an assignee or the attorney for the assignee removed. There isn't anything wrong in that. If attorneys appear representing creditors and render services that are beneficial to the estate that the attorney and the assignee would not have rendered, then they are entitled to compensation for that. They have the right to appear before a Court and ask the Court to remove an assignee and appoint someone else. They have a right to appear before a Court and ask the Court to appoint 2763

2764 a co-assignee. However, the Court is not required to do that merely upon their application. Nor when an assignee is acting, has filed his assignment with the Court and has employed him as attorney to represent him, that attorney and that assignee are not required to join as co-assignee or co-attorney any other creditor or any other assignee suggested by the creditors, unless he wishes. He can do it if he wants to. They could make an agreement among themselves—for instance, in this particular case Mr. Hoffman, if you find by what these conversations happened—and by telling you that I do not mean to intimate that they did or did not, but 2765 if they appeared before Mr. Hoffman and asked him to permit them to appoint a co-assignee and a co-attorney, Mr. Hoffman could have done it and they could have agreed that the fees which would be allowed Hoffman and the assignee would be split between them, and that would have been lawful as long as they were acting honestly and aboveboard and not splitting any secret fees, if any such arrangement were made. On the other hand, they had the right, by agreement, to appear there and say to Hoffman, "We want somebody to sit in with you, and we will designate a man to sit in with you and not charge you anything. We simply want to see that it is perfectly 2766 and fairly administered." That would be permissible. So that as long as they are acting lawfully and within the rights, they can do so. The creditors could all agree that the assignment be withdrawn and that the stock of merchandise be sold in bulk, and the attorneys representing the assignee would have been entitled to a reasonable fee to have been fixed by the Court for the work that had already been done up until that time, and then they would have been entitled to reasonable compensation.

If all the creditors agreed that a bulk sale should be made and reasonable compensation be paid to those who

actually worked and the remainder divided among creditors, that would have been lawful. On the other hand, creditors also have the right when an act of bankruptcy has been committed to file a petition in bankruptcy and have the assignor adjudicated a bankrupt and his entire assets administered through the Bankruptcy Court. Whenever that is done, then the Bankruptcy Court takes complete jurisdiction; in other words, takes complete charge of the assets of the bankrupt. Then, within a certain time after notice to creditors is given, the trustee is elected by the creditors themselves and he acts under the direction and supervision of the referee in bankruptcy, with the right of appeal to the Federal Court from any decision that anybody feels aggrieved at by the referee in bankruptcy. The fees that are allowed to the trustee in bankruptcy and to the attorney representing the trustee in bankruptcy and to the attorneys who file the petition to have him adjudicated are determined by the Court. In the first instance it is determined by the referee unless it goes to a certain large amount, with the right always to appeal to the Court to determine the justice of it, but the referee hears evidence and determines what the just fees are. 2767 2768

So that in this case, when this assignment was filed by Mr. Hoffman of the assets of Hymowitz, by Hymowitz filing an assignment for the benefit of creditors, then an act of bankruptcy was committed. The creditors have a right to file a petition to have him adjudicated a bankrupt upon the ground that he had made an assignment for the benefit of creditors, provided that a sufficient number of creditors and a sufficient amount of claims petitioned the Court to do that. 2769

Let me see the indictment and the petition, will you please, Mr. Clerk.

(Papers handed to the Court by the clerk.)

So that now we come down to what is the charge in this case. A lawful bankruptcy is always permissible. When the facts have occurred which justify the adjudication of bankruptcy, then an insolvent man has a right to petition voluntarily to go into bankruptcy. If he does not, then the creditors have a right to have him thrown in bankruptcy. That contemplates a fair, honest legal administration of the estate through the Bankruptcy Court, and if the attorneys, the trustees and others connected with it act in the matter honestly and with no intent to defraud, then no crime is committed even though a mistake might be made. You are not concerned with mistakes in this case. You are not concerned in this case whether it was best to throw it into bankruptcy or whether it was best to have a bulk sale or whether it was best to have it go through the assignment. It concerns you in no way whatsoever as to whether that was the best thing to do or not, other than what weight you should give to the testimony of various witnesses. The question for you to determine is whether or not a crime has been committed, and at this point before I forget it let me say this to you:

Hoffman is not on trial. The only three defendants who are on trial are Martin M. Goldman, Theodore Goldman and Jacob P. Schulman. You are not concerned with whether Hoffman is a crook or whether he is guilty of misconduct or a violation of ethics. More than that, you are entitled and should take into consideration any interest that he might have in the case or anything that has transpired that might affect his credibility. You are not trying Kandell because Kandell is now out of the case, and while I am on that I will say that the dismissal of the indictment as to Kandell by the Court is no proof of the guilt of these defendants nor is it any proof of the innocence of these defendants. He is

out of the case, whether the Court was right or whether 2773
the Court was wrong. He is out of it and you are concerned not with any errors that the Court might have made but you are concerned only with whether or not these three defendants now on trial are guilty of this crime with which they are charged.

I might say at this time also that the reason Kandell was acquitted by the Court was because there was not sufficient evidence to show that he had knowledge of whether or not any conspiracy unlawfully had been formed, because one of the essential elements of this crime, as to all three of these defendants or any other one who may be charged with a crime of this type, is knowledge and 2774
intent to engage in the unlawful conspiracy.

The defendants here are charged with having on or about the 24th of March, 1937, and continuously thereafter up until April, 1938, wilfully, unlawfully and knowingly "combined, conspired, confederated and agreed together and with each other and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5), of the National Bankruptcy Act, (Title 11, Section 52 (b) (5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid knowing that one Paul Hymowitz had executed a general assign- 2775
ment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert

Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid and Paul Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

"It was part of the conspiracy aforesaid that Theodore Goldman and Samuel Irving Kandell, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of Samuel Irving Kandell, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Theodore Goldman and Martin M. Goldman, two of the defendants aforesaid, were partners, as co-attorneys for the assignee aforesaid, and that after this attempt had proven unsuccessful, Jacob F. Schulman, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt and that the said petition would be drawn in such a way that the defendants could procure its dismissal.

"It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney

aforesaid, Samuel S. Kolman, the assignee aforesaid, and 2779
Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of Paul Hymowitz aforesaid pursuant to which the assignment proceedings would be dismissed and the creditors aforesaid would receive about forty per cent of their claims," and so forth. I don't think it is necessary to read the balance of the indictment. You will have it out with you.

And that in pursuance of that alleged conspiracy certain overt acts were committed in furtherance of it. That is what the indictment charges. Let me say right here for fear that I might overlook it that the finding of the 2780
indictment is no evidence against the defendants. It is simply a charge that puts them to trial up here before a petty jury and constitutes no evidence whatsoever against them, and when they are brought to trial upon that indictment the burden rests upon the Government to prove them guilty of it beyond every reasonable doubt. If the Government fails to do that they are entitled to an acquittal. If the Government does that, then they should be convicted.

The Bankruptcy Act which is alleged to have been violated makes it a crime, and it is unlawful for any person to receive or to attempt to obtain any money or 2781
property, remuneration, compensation, reward, advantage or promise thereof from any person for acting or forbearing to act in any proceeding under this title. So that now, in short, this indictment charges that these defendants agreed among themselves, and probably with various other persons unknown, to violate that act in that they would use the Bankruptcy Court as a subterfuge or a conduit through which they would force a settlement with Hoffman and Hymowitz, and then withdraw that petition in bankruptcy, have it dismissed, and would then,

2782 if the agreement were made and went through, sell the stock of goods either in bulk or at private sale at a greater price than they would disclose to the creditors, would disclose to the creditors a certain amount of funds, saying to the creditors that this was all that was obtained for the sale of those goods, which was to be divided among creditors, and that the secret fund would be divided among the defendants.

The Government alleges that in pursuance of that agreement that they did have various meetings and did make that agreement and that in furtherance of it, in carrying it out, they caused to be filed a petition in bankruptcy 2783 which upon its face was demurrable, that is, to be dismissed without notice to the creditors, and that was done with the fraudulent intent to forbear or to use the Bankruptcy Act in furtherance of their own private gains.

If you believe that beyond every reasonable doubt, if these defendants did that and the Government has shown that beyond every reasonable doubt, you should not hesitate to convict them but if, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not then you should not hesitate to acquit them.

The filing of the petition in bankruptcy of itself is 2784 no evidence whatsoever because they had the right to file the petition in bankruptcy and to have this man adjudicated a bankrupt, but if they did that with the fraudulent intent to enrich themselves, with the intent and purpose in mind that when they found they were not going to carry through the bankruptcy proceeding but were going to use it as a conduit to carry out their scheme, and that they would dismiss it—that they would enrich themselves and it was done with the intent to defraud, then you should convict them, but if you have a reasonable doubt as to whether that is true or not, then you should turn them loose.

Ordinarily—and it is the duty of attorneys as well 2785
as litigants acting through attorneys—when they file a petition in bankruptcy or whenever they file any other document in court, they should state the facts as recognized to them to be true or upon which they have a reasonable basis that they are true and to file them in good faith believing them to be true. If they do not do that, if they do use a subterfuge and file things that are not true, then that is a circumstance to be considered by the jury in determining whether or not the defendants were guilty of a crime or whether it was done simply through oversight, through error, through
mistake or someone not acting with a fraudulent intent. 2786

In this particular case, when Hymowitz made an assignment for the benefit of his creditors, he committed an act of bankruptcy and if attorneys were going to file a petition to have him adjudicated a bankrupt it was their duty to have alleged that fact or to have alleged other acts of bankruptcy that were true or that were believed by them in good faith, after a reasonable investigation, to be true. In this case this petition in bankruptcy, which is a printed form to a certain extent, filled in by a typewriter as to blank, alleges and avers to the Court that Paul Hymowitz was a citizen of the New York
district, and so forth, and that he owes debts in the sum of 2787
$1000 or over and that he has been engaged in the business of selling men's wearing apparel and so forth, and that these petitioning creditors who signed this petition of the alleged bankrupt have provable claims against the alleged bankrupt, Hymowitz, amounting in excess to the value of securities held by them to over $500 and that the nature and amount of petitioners' claims are as follows, and then it sets out what the nature of the debts owing by Hymowitz to them was.

Then it alleges, as it is required to before they can

2788 secure an adjudication in bankruptcy or have a man declared a bankrupt, that he has committed certain acts of bankruptcy. Here is one that they allege:

"Your petitioners further allege that the said alleged bankrupt while insolvent and within four months next preceding the filing of this petition and while insolvent as aforesaid, committed an act of bankruptcy, in that he did the following acts:

"1. That the alleged bankrupt with intent to hinder, delay or defraud his creditors, and with intent and for the purpose of giving a preference contrary to the provi-
2789 sions of the Bankruptcy Act and upon pretended and alleged antecedent indebtedness claimed or alleged to be due from the said alleged bankrupt to divers persons, firms and corporations, transferred and set over unto said divers persons, firms and corporations whose names are unknown to your petitioners valuable property, consisting of money, merchandise, accounts and dues receivable of the value of $500 applicable to the payment of the debts of the said alleged bankrupt."

You will note in that that it alleges that he set aside $500 or property to the value of $500 to creditors who were not entitled to it.

2790 "2." —an act of bankruptcy alleged to have been committed—"That while insolvent as aforesaid the said alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $500 to various of his creditors with intent thereby to prefer such creditors over other creditors of the same class, the names of such preferred creditors being unknown to your petitioners."

And then No. 3 is stricken out; No. 4 is stricken out; No. 5 is stricken out and No. 6 is not filled in and is not stricken out. No. 6 reads as follows:

"That on or about the day of 193 , the

alleged bankrupt above named made an assignment for the benefit of creditors, to which assignment was recorded in the office of the Clerk of the County of on the day of , 193 ." 2791

No. 7 is stricken out.

No. 8: "That there are more than twelve creditors in number of said alleged bankrupt."

If he had filled in No. 6 correctly, giving the date that the assignment was made for the benefit of creditors, then this petition in bankruptcy could not have been dismissed by the Court without first giving notice to all of the creditors of the bankrupt, whereas having been filed as it is, not being sufficient upon its face, then a demurrer—what is in the nature of a demurrer to it—was sustained without notice to the creditors. 2792

Another thing is that when creditors file a petition against a man to have him adjudicated a bankrupt and claim that he made an assignment for the benefit of creditors or that he transferred property in the amount of $500 or more with the intent to prefer creditors, the bankrupt, the man against whom the petition is filed, is entitled to contest that and to a trial by jury if he asks for it within the time that he is permitted to file an answer to it.

So that when an allegation is made that a man has transferred more than $500 worth of his property to creditors for the purpose of preferring them or has concealed more than $500 from his creditors, he is entitled to contest that, and if it is not true, then he will not be adjudicated a bankrupt. Likewise, he is permitted to contest the filing of an assignment for the benefit of creditors, but if it is true that an assignment for the benefit of creditors has been made within four months, then he cannot escape bankruptcy because that is an act of bankruptcy. 2793

2794 But now then, I call your attention to this, ladies and gentlemen of the jury, not for the purpose of emphasizing it nor for the purpose of indicating to you that I believe that that was the motive behind the manner in which that was filed or that I do not believe that that was the motive because that is the function of the jury to determine, that if the defendants' explanation of that is that it is customarily done, say that a man has committed an act of bankruptcy by transferring more than $500 of his property to one of his creditors for the purpose of preferring him or that he concealed it for the purpose of hindering and delaying his creditors— that that
2795 was customarily done and that he handles a great many of them and if he has efficient secretaries and efficient stenographers he can say to them, "Take this, fill it out, charge an act of bankruptcy there"—that that is what was done in this case. If that was done or if you have a reasonable doubt in your mind as to whether that was done or not, then this in itself would not be sufficient to show any conspiracy and would not be any evidence of the conspiracy. So it is a question for you to determine whether or not it was done in good faith. The whole question comes down to this, ladies and gentlemen, whether or not they were acting in good faith, or were they acting
2796 with the intent to defraud and in pursuance of a conspiracy.

If they were acting in pursuance of an unlawful agreement and with the intent to defraud, and that this petition was filed with the knowledge and purpose, in view and knowing that they could file a motion to dismiss it without giving notice to the creditors, and that that was a part of a scheme to defraud and entered into and in furtherance of that scheme, if one were made, then they would be guilty; but if, on the other hand, you have a reasonable doubt in your minds as to whether any agreement ever was made and that this was done in pursuance of it, then you will acquit them.

So that, ladies and gentlemen, here is your case: The 2797
Government alleges that these defendants entered into an unlawful agreement to use the Bankruptcy Court for the purpose of extorting fees, in short, for the purpose and with the intent to defraud the creditors and to obtain money or advantages or remuneration for their own purpose. If you believe beyond every reasonable doubt that they did that, then it is your duty to convict them. If, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not it is your duty to acquit them.

As I said a few moments ago, they have the right to 2798
file a petition in bankruptcy. They have the right to withdraw the petition in bankruptcy under certain circumstances, as in this case, if it is done in good faith and was not done in pursuance of any conspiracy. In other words, if you should believe from the evidence in this case that these lawyers had the creditors' meeting down there, that they participated in it and they met there with honest motives, with the sole purpose in view of performing the duties to these creditors for their best interests and that they reached the conclusion that the best thing to do was to withdraw the assignment, withdraw the bankruptcy, and to have it sold in bulk sale, why, then they had a 2799
perfect right to do that even though it did not pay but 10 or 12 or 15 per cent on the dollar. But if, on the other hand, the unlawful agreement was entered into, that it was done with the fraudulent intent to defraud the creditors and the Bankruptcy Court was used as a conduit through which to carry out that fraudulent scheme, then they would be guilty of a crime and if they have so shown beyond every reasonable doubt, it is your duty to convict them. If, on the other hand, they have not been so shown it is your duty to acquit them.

A conspiracy, ladies and gentlemen, is this: It is an

2800 unlawful agreement between two or more persons to commit a crime against the Government of the United States, and that one of them do some overt act in furtherance of that conspiracy. It does not have to be in writing. It does not have to be express. It does not have to be definitely agreed to; that is to say, all of the terms at one time. It is sufficient if there is an agreement, express, implied or tacit, that they will commit a crime against the United States and one of them in pursuance of that agreement does some overt act to carry it out. If an agreement is reached to violate a law of the United States and an overt act is committed in furtherance of it, then all are guilty of it
2801 who enter into it whether they do any of the overt acts or not. In other words, if half a dozen people or a dozen people conspire to commit a crime and one of them does an overt act in furtherance of it after the conspiracy is entered into, then all are guilty. Likewise, it does not have to be entered into by all at one time. Others can join the conspiracy. If two or more people enter into a conspiracy to commit a crime and later on others join that conspiracy with knowledge of its purpose, and enter into it with knowledge of its purpose, and thereafter one of them does some act in furtherance of it, then all are guilty. In other words, whenever one person does an overt act in
2802 furtherance of a conspiracy all are guilty. So that in this case if you believe from the evidence beyond every reasonable doubt that these three defendants entered into a conspiracy to violate this act of Congress, this Bankruptcy Act, and that in pursuance of that conspiracy one of them did an act in furtherance of it, why, then all of them would be guilty, and that it is done with the intent to defraud.

As to Teddy Goldman, one of the essential elements of the conspiracy is knowledge. Evidence as to Teddy Goldman is circumstantial. Evidence as to the others, if be-

lieved, is direct. If you believe from the evidence beyond 2803
every reasonable doubt, from all of the facts and circumstances and evidence in the case beyond every reasonable doubt that Martin Goldman and Schulman entered into the conspiracy and that an overt act was done in furtherance of it you would convict them. On the other hand, if you have a reasonable doubt in your minds as to whether that is true or not you will turn them loose.

Then as to Teddy Goldman, the method of proof is different, and by the way, before I go on to that, a conspiracy may be proved by any evidence if it meets the requirements of the law. It may be proved by circumstantial evidence; 2804
it may be proved by direct and positive evidence, and wherever there is direct and positive evidence the law requires the proof to rise beyond a reasonable doubt, but where circumstances are entirely relied upon, then the circumstances must rise to the point that they exclude every other reasonable hypothesis than that of guilt.

If you should believe from this evidence beyond every reasonable doubt that Martin Goldman and Schulman entered into a conspiracy and if you should believe from the facts and circumstances to the exclusion of every other reasonable hypothesis than that of guilt, that Theodore Goldman joined it with full knowledge of its purposes 2805
and that thereafter an overt act was done, why, then he too would be guilty.

So I think that just about covers a conspiracy. Ladies and gentlemen, in weighing the testimony of all the witnesses in the case, of every witness who testified, it is your duty to consider all of the testimony. You are the sole judges of the weight of the testimony and of the credibility of the witnesses. If you should believe from the testimony that any witness has wilfully, knowingly and fraudulently and corruptly sworn falsely to a material fact in the case you may disregard the testimony of any

2806 such witness or witnesses, or altogether if you desire. In weighing the testimony of all witnesses you may take into consideration any interest in the outcome of the case that the witness may have in the case. You may take into consideration any statements made on prior occasions that are in conflict with the ones testified to on the witness stand and the explanations that are made with reference to variances, if there are any variances. Then weigh it in the light of the interest of the witnesses that were on the stand or any other thing that affects their credibility.

2807 You, in the last analysis, are the sole judges of what worth you will give to any testimony and what belief you will give to the testimony of any witness.

The defendants in the case are competent witnesses in their own behalf. Their testimony is entitled to the same consideration by you as that of any other witness, but what weight and what belief you will give to the testimony of the defendants, as well as any other witness, is entirely for you to determine for yourselves. In weighing the testimony of the defendants you are entitled to consider that they are vitally interested in the outcome of the trial of the case. Consider that in weighing their testimony. They

2808 are competent witnesses and their testimony is entitled to the same consideration. The fact that they are defendants does not of itself require you to totally disregard their testimony, but on the other hand, you are required to give careful consideration to all of the testimony there is, along with all of the others and then say from all of the facts and circumstances whether or not you believe from this evidence beyond every reasonable doubt that the defendants are guilty. If they are, promptly find them guilty. If you don't so believe, then find them not guilty.

Reasonable doubt does not mean a mere possibility. It is not a fanciful thing. The law does not require that the

Government prove them guilty to an absolute certainty, but 2809
it does require that they be proven guilty beyond every reasonable doubt. Reasonable doubt is very difficult to define. I really cannot find a much better definition than what it says, simply a reasonable doubt. It must be a doubt based upon some facts or a lack of some facts from which a reasonably prudent person would say that there is doubt "in my mind as to whether a certain thing is true or not." It is based upon some reason, such reason as a reasonably prudent person would say is a reasonable justification or a reasonable basis.

As I say, mere possibility, mere fancy, mere sympathy or 2810
anything like that cannot raise a reasonable doubt. It can arise from an insufficient amount of evidence or it can arise from all of the evidence. If there is a reasonable doubt in your minds as to their guilt it is your duty to give them the benefit of it and acquit them. If there is not any reasonable doubt in your minds as to their guilt, then it is your duty to convict them. That is the law, regardless of anything else or how you might feel in the case.

Another fact that was commented upon, the failure of former grand juries to indict. The failure of a former grand jury to indict does not necessarily mean the defendants are not guilty. The question of their guilt or 2811
innocence is to be determined from all of the facts and circumstances produced upon the witness stand. Likewise, the number of acquittals or convictions that may have been obtained in this court on prior occasions, or as to what the public might think about your verdict in this case is entirely immaterial. You are not concerned with how many convictions have been obtained or how many acquittals have been obtained in the past. You are concerned solely and only with the one question of whether or not the evidence in this case proved beyond every reasonable doubt the guilt of these defendants, and if it does you should so find; if it does not, you should find them not guilty.

2812 Likewise, briefly, when an attorney files an assignment on behalf of an assignee it is the duty of that attorney to act honestly, to acquire all of the assets of that estate on behalf of that assignee and to defend any claims that are not just claims against that estate. In other words, an attorney representing an assignee must act fairly, openly, aboveboard and honestly.

So in conclusion, ladies and gentlemen, as I said in the opening, you shall be influenced now by nothing in the world other than the evidence that you have heard and the instructions I have given you. You are not concerned with sympathy, malice or ill-will. You are not
2813 concerned with the manner in which evidence was obtained. The only thing that you are concerned with is whether or not from the evidence that has been admitted for your hearing and your consideration, has convinced you beyond every reasonable doubt that these defendants are guilty. If it has and if you believe from this evidence beyond every reasonable doubt that these defendants entered into a conspiracy to defraud, and by the use of the Bankruptcy Act, as I have hereinbefore charged you, then you should convict them. If, on the other hand, you have a reasonable doubt in your minds as to whether that is true or not, then
2814 you should turn them loose.

Let me say to you that nothing I have said, no tone of my voice or any act of mine has been intended to indicate to you in the slightest how I feel that the case ought to be decided. It is your province to determine from this evidence whether these defendants have been shown to be guilty or innocent. It is not mine, and I have not intended to indicate by any emphasis on any part of the evidence, if I have referred to the evidence or anything else, how I feel about the case. It is solely your province. It takes all twelve of you to agree upon a verdict. As long as one of you entertains a reasonable doubt as to the guilt

of a defendant, it is your duty to vote for an acquittal. 2815
If all of you entertain a reasonable doubt, it is your duty to acquit them. If none of you have a reasonable doubt, it is your duty to convict.

I will charge you this: There must be an agreement between two or more persons to commit a conspiracy. You are not trying Schulman or Goldman or either one of them for committing the specific act of using the Bankruptcy Court to defraud. You are trying them for an unlawful agreement and there must be an agreement between two or more persons. If you believe that Schulman attempted to defraud or if you believe that Goldman attempted to defraud or if you believe that Teddy Goldman 2816
attempted to defraud or if you believe that Hoffman attempted to defraud but not in furtherance of any conspiracy or by virtue of any conspiracy, you could not convict them. There must be an agreement. It takes two or more people to have an agreement. You could convict any one of the defendants, you could convict two of them or all of them. As I say, it takes all twelve of you to reach a verdict.

Any further requests for instructions from the Government?

Mr. Walsh: No, if your Honor please.

The Court: Any requests for instructions by any of the 2817
defendants?

Mr. Corbin: If your Honor please, the defendants Goldman regard the charge as eminently fair and take no exception whatsoever. There is this, by way of an additional instruction, if your Honor will hear me briefly.

The Court: Yes.

Mr. Corbin: In reading from the indictment I think you reached a point just this side of the factual gravamen of the charge which is—and I ask your Honor to read enough, to read the few words following where you stopped, which ends "knowingly and fraudulently stating to the

2818 creditors"—shall I just read that? It is the end of that paragraph.

The Court: Do you have the page it is on, Mr. Corbin?

Mr. Corbin: It is on page 3 of it, the end of the second paragraph on the page, the second paragraph "knowingly and fraudulently stating to the creditors."

The Court: Yes; all right. I certainly did not intend to mislead the jury.

Mr. Corbin: No, I don't mean that.

The Court: Yes, I understand, Mr. Corbin. I will complete that paragraph beginning with "and that the defend-
2819 ants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1500 while the true price at which the defendants would sell to persons to the Grand Jurors unknown the assets of Paul Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit,
2820 about $400; and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan."

Mr. Corbin: That is all. And that is, if your Honor feels you should tell the jury that is the gravamen of the essential of the fraud charged in this indictment.

The Court: Yes, I will tell the jury that. That is the gravamen of the fraud that is attempted to be charged in this indictment. However, I will charge you this, that it is not necessary that it be exactly $400 or $300 or $500. If there was an unlawful agreement on the part of all of the defendants to defraud the creditors, and with the intent to defraud, that they would have the bankruptcy

petition filed and then withdrawn with the view in mind 2821
of defrauding the creditors and with the intent to defraud them, then they would be guilty. But if you have in your minds a reasonable doubt as to whether that is true or not, then you should find them not guilty.

Mr. Fielding: The defendant Schulman has no exception to that charge.

Mr. Walsh: If your Honor please, in view of what Mr. Corbin said, will you—

(Mr. Walsh hands paper to the Court.)

The Court: Yes. I am requested by the Government now, in view of having read another part of the indictment, to read an overt act. I won't read the indictment as to 2822
an overt act. There are some seven or eight of them charged as having been committed in furtherance of the conspiracy. I will say this, however, as I have heretofore charged, that if one of the overt acts were committed by one of the defendants after the formation of a conspiracy, then all would be guilty and it is not necessary that all participate in the overt act. It is necessary that there be an unlawful agreement to commit a crime against the United States and that thereafter in furtherance of the conspiracy one overt act be committed by one of the defendants, if that is done and it is shown beyond every 2823
reasonable doubt to have been done, then you should find the defendants guilty. If, on the other hand, you have a reasonable doubt in your minds as to whether that was done or not, then you should find the defendants not guilty.

Mr. Walsh: There is one more part there, if your Honor please.

Mr. Corbin: Well, can't we consent that they take the indictment with them?

The Court: Yes, I will let them take the indictment with them. I had thought I had made this clear but I will

2824 charge it again, that the conspiracy may be proved even though the money was not divided. I will charge you that, ladies and gentlemen, if you believe that a conspiracy was entered into and that an overt act was committed in furtherance of it and with the intent to carry out the purposes of the conspiracy, then it would be immaterial whether money was actually received and divided or not. It is a question of entering into a conspiracy, an unlawful agreement to commit the crime and then doing an overt act in furtherance of that conspiracy. Again I say that if you believe from the evidence beyond every reasonable doubt in this case that that was done, you should find them
2825 guilty as charged. If, on the other hand, you have a reasonable doubt in your minds as to whether or not they are guilty, it is your duty to acquit them.

Mr. Corbin: Thank you.

The Court: You may retire.

(Whereupon the jury retired at 3:35 P. M.)

The Court: Before the parties to this case leave, I am going to say I will be here until 10 o'clock tonight, if the verdict should come in. You may go to your respective offices if you wish but before you do leave word with the marshal where you may be found in the event that the
2826 jury reaches a verdict so that you may be called.

(At 3:55 P. M. the following note was sent in by the jury:)

"Indictment, FBI complete transcripts, bills of sale to L. Wein and A. Rothlein petition in bankruptcy."

The Court: There are some exhibits they asked for.

Mr. Walsh: Yes. We will confer and then bring them up to you.

(Short recess.)

Mr. Walsh: If your Honor please, in reply to the note received from the jury, Mr. Warren C. Fielding, Mr. Harold Corbin and myself have agreed that the papers I now

hold in my hand are: A copy of the original indictment with the back removed; Exhibit 21-A; Exhibit 20-A; Exhibit 19-A; Exhibit 18-A; Government's Exhibit 8, which is the bill of sale to Wein, and the bill of sale to Rothlein in the amount of $1500; and Government's Exhibit 3 in evidence, which is the original petition filed in this court. 2827

I am now handing them to the clerk.

The Court: Very well.

Mr. Walsh: Is that correct?

Mr. Fielding: Right.

Mr. Walsh: Both Mr. Fielding and Mr. Corbin say that is right.

(Exhibits sent in to the jury.) 2828

(At 6:25 P. M. the jury returned to the courtroom where the following proceedings were had:)

(The jury was polled.)

The Clerk: Madam Forelady, has the jury agreed upon a verdict?

The Forelady: They have.

The Clerk: How do you find?

The Forelady: We find all three defendants guilty as charged.

The Clerk: You may be seated. Ladies and gentlemen, listen to your verdict as it stands recorded. You say you find the defendants Martin M. Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged; and so say you all? 2829

Jurors: Yes.

The Court: Ladies and gentlemen, before I discharge you let me say to you I appreciate your patience and also your willingness in having come earlier and remained later at some inconvenience to yourself in order to accommodate me. I thank you very much. I have enjoyed my trip up here to New York with you.

You may be excused for the term.

2830 The Forelady: Thank you.

(The jury left the courtroom.)

The Court: Let the defendants come around.

Mr. Corbin: Do you want motions?

The Court: Yes, I will take motions before I impose sentence.

Mr. Corbin: I think we should have the usual motions, to set aside the verdict on the ground that as a matter of law the evidence raises a reasonable doubt, that the verdict is contrary to the evidence and the weight of the evidence.

The Court: Let the motion be overruled.

2831 Mr. Fielding: I make the same motion on behalf of the defendant Schulman.

The Court: Let the motion be overruled.

Mr. Fielding: Exception.

Mr. Corbin: Exception.

The Court: Very well. Let the defendants step up.

Do you have anything further to say before sentence is imposed?

Defendant Martin Goldman: No.

Defendant: Theodore Goldman: No.

Defendant Schulman: I do, if your Honor please.

The Court: Very well.

2832 Defendant Schulman: I of course must abide by the wisdom of the jury's verdict. I can't complain I did not have a fair trial but I will say this: Every client that I have had since 1937 and thereafter, that is, since 1937 and since this matter was being investigated, still believes in me, in my integrity and in my confidence. I haven't lost one client to this very day. All these clients, particularly in the same line of business, have been giving me professional business. I can't understand this verdict. I think it is a miscarriage in some way I of course come back to the original proposition that I think I have received

a fair trial at your Honor's hands and at the jury's hands. 2833

The Court: Well, gentlemen, it is very painful of course for a judge to have to impose sentence, particularly to me, upon members of the Bar. The jury has acted upon the evidence and have found you guilty and there is nothing else for the Court to do other than impose sentence. Some judges probably would impose the maximum sentence because you are lawyers; you have been convicted of this crime. Some judges probably would impose a smaller sentence than I intend to impose, but I might say that I have given this matter serious thought throughout the entire trial, and to adjourn sentence to a later date, which of course has not been asked for, but if I did not have my 2834 mind definitely made up after having heard the entire case I would do so, but there is nothing to be gained by postponing it. If I were to call for a probation report it wouldn't change what I have in mind because I am assuming that you lawyers have borne good reputations prior to this time. You are intelligent lawyers. You have demonstrated that throughout the trial of this case. The jury has found you guilty, however, and I must act upon the presumption that you are guilty and in view of the fact that the jury has found you guilty, and assuming that you are, I am going to impose a fine of $25, sentence you to the penitentiary for a period of 18 months, someone to be 2835 designated by the Attorney General and remit the fine. I am not imposing the maximum sentence because I realize that the conviction is going to carry a severe sentence within itself, the loss of practice that you will suffer by reason of the fact that you are confined and you are deprived from the profession that you have chosen for your life, one that is a very worthy profession and one that is always my purpose to endeavor to uphold.

In your own conscience you know whether you are guilty or not. If you are, when you are released from the peni-

2836 tentiary, if you should ultimately go there, and if you come back after a certain length of time I take it that the Court can reinstate you as members of the Bar if you show yourselves worthy to be members. I have seen disbarment cases; I have seen lawyers disbarred for what I concede to be more heinous offenses than the one with which you are charged here, but after a certain period were permitted to be reinstated. I know particularly one lawyer who was disbarred for a very heinous crime: Extortion of $80,000. He was a very brilliant fellow and he took his punishment. After a period of some two or three years, by his course of conduct during that time, he was
2837 able to show that he had so rehabilitated himself that the Court did reinstate him as a member of the Bar. He has made good. He is a high-class lawyer now. His work is accepted, and so you men may be in that class. It depends upon you.

It is not a pleasure for me to impose sentence upon you. I might say this, that if counsel for the defendants desire to make a motion for a new trial, I would rule upon it immediately, but I think this is a case where if you decide to appeal that you do have one substantial question in the case, that would justify the Court in permitting you to remain on bail during the pendency of the
2838 appeal, but at any rate, that would be the sentence of the Court at this time.

Defendant Schulman: May I ask your Honor this: I for one have had a very small practice. In view of this trouble and the mental anguish that I have gone through and the reduction to practically zero of my present income, I state to your Honor this, I have no intention now to ever re-establish myself in the legal profession, beautiful or good as it may be. All my present plans are now to simply seek employment in any place that I can get and I don't know just where I can get it, except that there

is one possible source of employment that I have in mind now. If your Honor will be good enough to suspend sentence or to minimize that sentence it will simply mean that I will get the job and be able to provide for my wife and children. I have no intentions to getting back into the legal profession. God knows it has been a struggle all along. 2839

The Court: Well, as much as I would like to I would not be justified in suspending the execution of the sentence. It is very painful to the Court, who has been an active practitioner himself, to impose sentence. Of course, I have a duty to perform and if I should suspend sentence in this case I would feel like going back to Mississippi, opening up the bars of those that I have imposed sentence upon, who are less brilliant than either of you, who are less fortunate in the economic affairs of life and whose crimes are not as great as this, so I will have to deny your request for probation. 2840

Defendant Schulman: Will you Honor minimize that sentence to something, to some period that your Honor with some employment of mercy, so that at the time after, let us say, I am deprived of making a living that period should be shortened so that my three children shouldn't be in want. My economic conditions are not such that they will be free from want in the absence of earning capacity. 2841

The Court: I would not be justified in reducing the sentence any. I deliberated upon the question of whether or not if the jury brought in a verdict of guilty I should impose a maximum sentence of two years with a heavier fine. I reached this conclusion after mature judgment. I will say this to all of you, that when you become eligible for parole, very probably I would recommend a parole unless the Government showed me sufficient facts as a background, which of course could not have been brought to the attention

2842 of the Court, that would justify me opposing a parole. You men if you be guilty, and the jury have so found, have made a serious mistake, one probably that you had not given proper consideration to the acts or to the conduct of which you have been found guilty. If there isn't anything in the background which shows that this has been a studied plan over a period of years and that you have had a bad reputation all along this line, I would say this, that I would recommend a parole.

I might say further to you that as long as your Parole Board is constituted as it is, my recommendation carries some weight with it because I don't recommend a parole
2843 in every case. I happen to be a schoolmate with one of the members of the Parole Board, not only a schoolmate but a very intimate friend, and I have discussed questions of parole with him from time to time. I am a believer in probation in proper cases to a certain extent. In a reasonable number of cases I am a believer in parole. So when men have had opportunity to think the situations over and also to suffer the punishment for the crimes, may still come out and be rehabilitated under the supervision of the parole officer, so that the best that I can say to you at this time is that if you ultimately are carried to the
2844 penitentiary, after you shall have served one-third of your time, you will be eligible for parole. If at that time you make application and there isn't some showing of a background why it should not be recommended, why, I would recommend parole but I won't pass on that question at this time but simply advise you how I feel toward you.

Mr. Corbin: May we have a continuance of bail pending appeal, Judge?

The Court: Yes. Now the defendants may be seated.

Let me ask you this, Mr. Corbin: Do you intend to file a motion for a new trial?

Mr. Corbin: Well, yes. But I take it from what you said that you do not want any argument on it? 2845

The Court: No, sir, I do not. I have studied all of these questions. If you insisted I would hear you but my mind is rather firmly fixed that no errors have been committed. You do, however, have a substantial question there. I think my decision was correct on it but it is one that I wouldn't change it on unless a later case deciding the specific question were presented to me, showing that I was in error. It is a question that ought to be passed upon by an appellate court and will be passed upon by an appellate court; as I say, I think that my decision would be upheld but I can see where the Court probably 2846 could carry the doctrine of an unreasonable search just a little further than it has but I don't believe that it will.

Mr. Corbin: Well, suppose then that I record that motion now.

The Court: I was going to say if you do that I will pass on it now, and I will state to you now without hearing from the Government that I would grant these defendants bail pending their appeal because I have had all these matters argued out before me on other occasions and am thoroughly familiar with what the law is on that and have adopted a policy of my own in accordance with what I conceive the rules to be, and that is, if an appeal is frivolous, there isn't any likelihood of any error appearing in the case, I deny bail; but where they do have a substantial question, one that I am not certain absolutely in my own mind—and I think that the defendants will be present to answer the judgment of the appellate court if it go against them—then I allow bail. So if you desire to make a motion at this time, I will entertain it and rule upon it. 2847

Mr. Corbin: Under those circumstances I so move and assure your Honor that within five days we will file our notice of appeal.

2848 Mr. Fielding: I make a similar motion for the defendant Schulman.

The Court: For a new trial?

Mr. Fielding: For a new trial.

The Court: Very well. Let the motion for a new trial be overruled.

Mr. Fielding: Exception.

Mr. Corbin: And may the bail in the present amount remain? I really don't know what it is.

A Voice: $500.

The Court: How much is it?

Mr. Corbin: $500. It has been that right along.

2849 The Court: I think that a larger bail should be given. I take it that they can give a larger bail. I think that bail, pending the appeal, should be fixed at $1500, if they can get it, and I would parole them to your custody, in the custody of Mr. Fielding, and give them until Monday in which to prepare that bail.

Mr. Fielding: I am quite sure $1500 bail would be quite a burden for Mr. Schulman. There is no possible chance of his leaving the jurisdiction.

The Court: You do not think he can give $1500 bail?

Mr. Fielding: I doubt it, sir.

2850 The Court: Very well, I will fix his bail at $1000. I will fix the bail for each of the other defendants at $1000 and parole them in the custody of you gentlemen if you will accept it.

Mr. Fielding: I will accept it.

The Court: You will accept it?

Mr. Fielding: Yes.

The Court: Until Monday to fix the bail pending appeal.

Mr. Fielding: And the bail can be supplied any time Monday up until four o'clock?

The Court: Any time Monday up until four o'clock.

Mr. Fielding: Fine.

Colloquy.

The Court: I might say this, in fixing bail I have in 2851
mind two things: One is whether or not the defendant will attempt to flee the jurisdiction, and the second is that nowadays it is almost impossible for a defendant to escape the Federal Bureau of Investigation perpetually. He may rest assured that if he commits a crime against the United States it is going to be detected within a reasonable time.

I might say just as a matter of information—you need not take this.

(Discussion off the record.)

The Court: Very well. It won't be necessary, gentlemen, for me to be here further. You can file your assign-
ments of errors and notice of appeal, all those things 2852
with the clerk, and any other judge can act upon them because I have already fixed the bail pending an appeal, allowed an appeal, and if you don't press it, then of course the Government can take certain steps necessary to have the defendants incarcerated.

Mr. Corbin: Thanks again, Judge, for every courtesy.

The Court: You are quite welcome.

The Court will recess until Monday morning at 10:30.

2853

EXHIBITS USED UPON PRELIMINARY HEARING.

2854

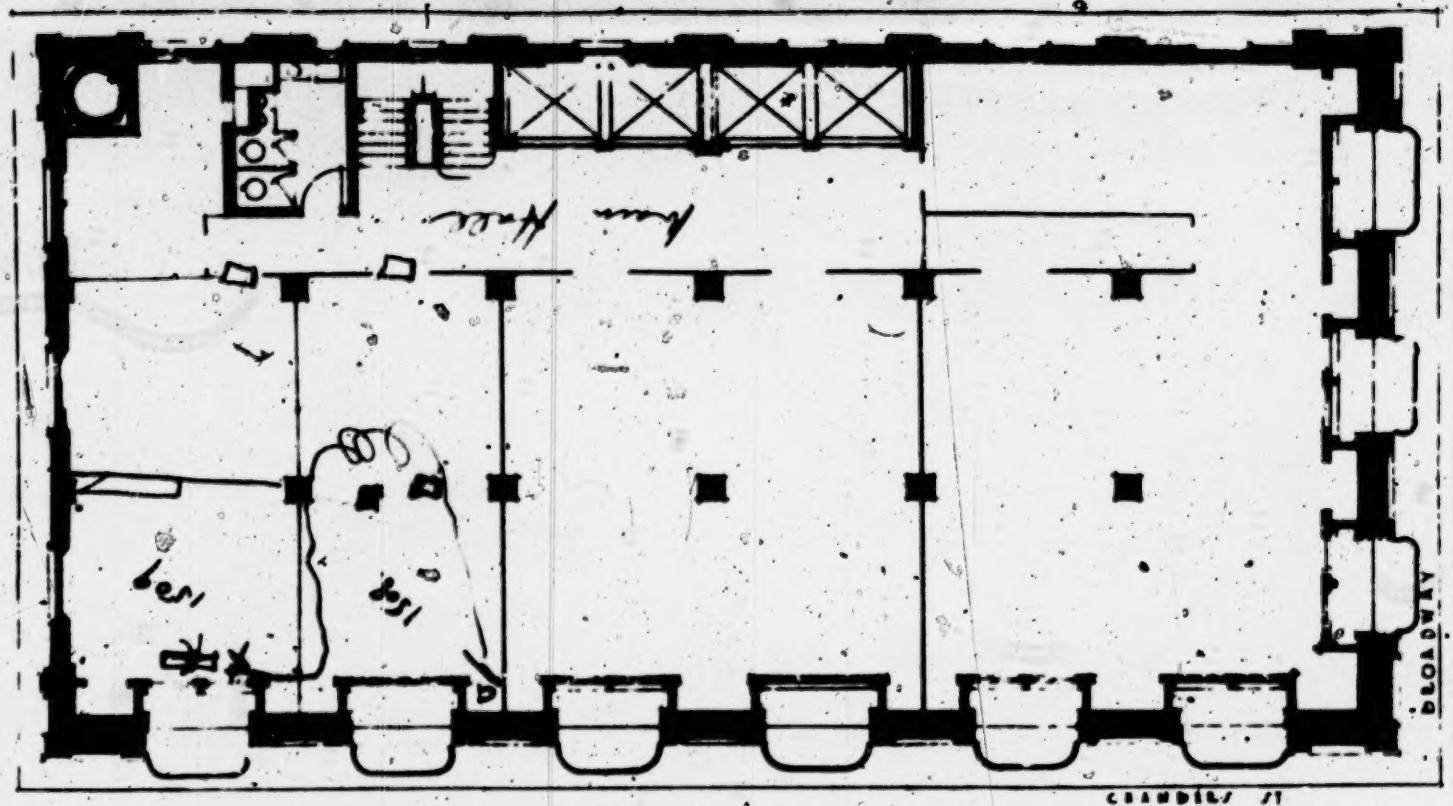
Petitioners' Exhibit 1.

Diagram.

(Opposite) ☞

2855

2856



277 BROADWAY — 15TH & 16TH FLOORS
NEW YORK CITY
SCALE 1/8"-1'-0"

BUTLER & BALDWIN, INC.
REAL ESTATE

Petitioners' Exhibits 2 to 5 for Identification.

2860

Notes and Report (omitted).

Petitioners' Exhibit 6.

Affidavit of Harold P. Turner (same as printed in full at pages 41-42, folios 121-125, herein).

2861

Government's Exhibit A for Identification.

Book (omitted by consent).

Government's Exhibit B for Identification.

Affidavit of Albert E. Frost (same as printed in full at pages 35-37, folios 104-111, herein).

2862

EXHIBITS USED UPON THE TRIAL.

2863

Government's Exhibit 1.

THIS INDENTURE, made this 22nd day of March in the year one thousand nine hundred and thirty-seven BETWEEN PAUL HYMOWITZ residing at No. 105 West 168th Street in the Borough of Bronx, County of Bronx, City of New York, in the State of New York, doing business under the name of Paul Hymowitz and now carrying on the business of retail sale of men's wearing apparel and general merchandise at No. 346 Bowery, in the Borough of Manhattan, New York County in the City and State of New York party of the first part and SAMUEL S. KOLMAN, 2864
residing at No. 767 Crown Street, in the Borough of Brooklyn, County of Kings, City and State of New York, party of the second part, WITNESSETH, That whereas the party of the first part is indebted to divers persons in sundry sums of money, which he is unable to pay in full, and is desirous of providing for the payment of the same, so far as is in his power, by an assignment of all his property for that purpose:

NOW, THEREFORE, The said party of the first part, in consideration of the premises and of the sum of one dollar to him paid by the party of the second part, upon the 2865
ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over, unto the party of the second part his successors and assigns, all and singular the lands, tenements, hereditaments, appurtenances, goods, chattels, stock, promissory notes, claims, demands, property and effects of every description belonging to the party of the first part, wherever the same may be, except such property as is exempt by law from levy and sale

2866 under an execution. To have and to hold the same, and every part thereof, unto the said party of the second part, his successors and assigns:

IN TRUST, NEVERTHELESS, to take possession of the same, and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections, to first pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment, and of carrying into effect the trust hereby created, together
2867 with the lawful commission of the party of the second part for his services in executing said trust; THEN

AND then to pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due or to grow due from the said party of the first part, with all interest moneys due or to grow due thereon; and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities and interest moneys in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion.

2868 AND if, after the payment of all the said debts and liabilities in full, there shall be any remainder of residue of said property or proceeds, to repay and return the same to the said party of the first part, his executors, administrators or assigns.

AND, in furtherance of the premises, the said party of the first part does hereby make, constitute and appoint the said party of the second part his true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, de-

mand, recover and receive of and from all and every person 286
or persons all property, debts and demands due, owing and belonging to the said part of the first part, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same; and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances. And the said party of the first part hereby authorizes the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note or other instrument in writing which is payable to the order of the said party of the first part, or to sign the name of the party of the first part to any instrument in writing, whenever it shall be necessary so to do, 287
to carry into effect the object, design and purpose of this trust.

THE said party of the second part does hereby accept the trust created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part that he will faithfully and without delay execute the said trust, according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above 287
written.

Witness as
to Paul Hymowitz

R. Hoffman

Paul Hymowitz (L. S.)
Paul Hymowitz

Samuel S. Kolman (L. S.)
Samuel S. Kolman

Government's Exhibit 1.

2872 State of New York,
County of New York—ss.:

On this 22 day of March in the year one thousand nine hundred thirty-seven before me personally came PAUL HYMOWITZ to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged that he executed the same.

Robert Hoffman
Notary Public
7873 New York County
N Y Co Clks No #239
Term Exp. 3/30/37

State of New York,
County of New York—ss.:

On this 24 day of March, in the year one thousand nine hundred thirty-seven before me personally came SAMUEL S. KOLMAN to me known, and known to me to be the individual described in and who executed the foregoing
2874 instrument, and duly acknowledged that he executed the same.

Meyer Parolnick
Notary Public Queens County
Queens Co Clerks 2711
N Y Co Clerks #498
Term Exp 3/30/38

Government's Exhibit 1.

(On Reverse Side) 2875

FEE PAID $3.00
MAR 24 1937
COUNTY CLERK N. Y. CO.
By
Cashier

CERTIFIED COPY ISSUED
Fee paid 2.40
Date 3/24/37
County Clerk, N. Y. Co. 2876
By

FILED
RECORDED
Mar 24 11:54 AM 37
COUNTY CLERK
NEW YORK COUNTY

2877

Government's Exhibit 2a.

2878

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the Court house, in the Borough of Manhattan, City of New York, on the 24th day of March, 1937.

Present: HON. CHARLES B. MCLAUGHLIN, *Justice*.

In the matter of the general assignment for the benefit of creditors of

2879

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

Upon reading and filing the annexed petition of SAMUEL S. KOLMAN, the assignee herein, and it appearing to my satisfaction that the assignor's estate is valued at about $1,500.00, it is, now on motion of ROBERT HOFFMAN, attorney for the assignee,

2880

ORDERED, that SAMUEL S. KOLMAN, the assignee herein, qualify under a provisional bond, duly approved by one of the Justices of this Court, in the sum of $1,500.00/100 for the faithful performance of his duties as such assignee, and it is further,

ORDERED, that upon the filing of the provisional bond herein, the assignee be and he hereby is permitted to sell the assets of the assignor at public auction, except book accounts and bills receivable, giving the creditors ten days notice by mail, and by advertisement published in the New

Government's Exhibit 7a.

York Law Journal, at least ten days prior to the day of sale, and that such sale shall be had within fifteen days after the entry of this order authorizing same, unless in the meantime an order of this Court has been obtained granting an extension of the time for such sale. 2881

ENTER

C. B. McL.
J. S. C.

SUPREME COURT,

NEW YORK COUNTY. 2882

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

TO THE SUPREME COURT OF THE COUNTY OF NEW YORK: 2883

The petition of SAMUEL S. KOLMAN, respectfully shows:

That he is the assignee herein; that he resides at No. 767 Crown Street, in the Borough of Brooklyn, City of New York. That on the 22nd day of March, 1937, an assignment of all the assets and property of PAUL HYMOWITZ, formerly conducting the business of army and navy goods at No. 346 Bowery, in the Borough of Manhattan, City of New York, was duly executed to your petitioner in

Government's Exhibit 2a.

2884 trust for the benefit of creditors herein. That said assignment was duly filed and recorded in the office of the Clerk of New York County, on the 24th day of March, 1937.

That no petition in bankruptcy has been filed by or against the above named assignor.

That your petitioner desires to qualify under a provisional bond, in order to dispose of the property herein immediately.

That your petitioner desires to have an immediate sale of the assets in his possession in order to save the expense of insurance and rent necessarily incurred in care of the said assets.

2885 That your petitioner has caused to be made an examination of the entire assets and has been informed and verily believes upon investigation of the same, that the entire assets, consisting of army and navy goods, fixtures, etc., are of value of about $1,500.00.

That annexed hereto and made part hereof is a list of the assets of the above named assignor, now in possession of your petitioner as assignee herein.

WHEREFORE, your petitioner respectfully prays for the annexed order for which no previous application has been made herein.

2886

Dated, New York, March 24, 1937.

Samuel S. Kolman

Government's Exhibit 2a.

City, County & State of New York—ss.: 2887

SAMUEL S. KOLMAN, being duly sworn, deposes and says: That he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

Samuel S. Kolman

Sworn to before me this
24th day of March, 1937. 2888

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

2889

Government's Exhibit 2a.

2890 INVENTORY

18 work shirts
18 union suits
17 zipper shirts
4 zipper sweaters
5 slip-overs
16 shirts
22 work gloves
10 suspenders
9 gloves
10 caps
2891 30 pr silk socks
35 pr socks
21 " "
5 overalls
13 pr work pants
1 pr. breeches
4 galoshes
15 work shirts
3 balbriggans
7 union suits
12 athletic shirts
13 polo shirts
2892 7 overalls
12 shorts
46 caps
108 pr shoes
32 " "
24 " "
6 " "
26 " "
17 " "
12 " "
40 overalls
18 " "
40 pr hose
160 " "
32 sweaters
120 gloves
32 shirts
45 balbriggans
40 "
6 rubbers
24 sneakers
18 sweaters
12 gloves
35 high shoes
12 overalls
22 pr arctics
27 shirts
142 rubbers
28 shirts
11 union suits
25 pr rubbers
36 pcs underwear
54½ doz hose
230 shirts
20 union suits
4 union suits
17 " "
10 " "
36 shirts
48 shorts
22 pcs underwear
19 pcs "
20 pr arctics
14 shirts
5 leather coats
14 sweaters

Government's Exhibit 2

5 shirts
15 pants
15 "
18 overalls
13 pants
9 shirts
5 shirts
30 pants
10 pants
7 overalls
6 slip overs
8 overalls
35 overalls
12 "
4 pants
18 overalls
4 pr boots

16 coats
12 shirts
9 shirts
15 slippers
2 coats
14 slippers
40 polo shirts
12 pr gloves
7 pr gloves
85 pr gloves
20 shirts
20 shirts
8 shirts
1 counter
1 show case
1 show case
1 National cash register

Mortgage-Bal. Due $60.00

2893

2894

2895

Government's Exhibit 2a.

2896

Index No. 12-415

SUPREME COURT.

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

2897

SAMUEL S. KOLMAN,

Assignee.

Original

PETITION AND ORDER FOR PROVISIONAL BOND AND SALE

ROBERT HOFFMAN
Attorney for Assignee
Office and Post Office Address.
1270 Broadway
Borough of Manhattan New York City.

2898

To Esq.

Attorney for

Due and timely service of a copy of the within is hereby admitted.

Dated, N. Y., 193

Attorney for

(Stamped)—MAR 26 1937

Government's Exhibit 2b.

2899

SUPREME COURT,

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee. 2900

TO THE CLERK OF THE SUPREME COURT, SPECIAL TERM, PART II.

SIR:

PLEASE TAKE NOTICE, that I appear in this proceeding as attorney for the assignee, pursuant to the annexed retainer, duly executed and acknowledged.

Dated, New York, March 24, 1937.

Robert Hoffman

2901

City, County & State of New York—ss.:

On the 24th day of March, 1937, before me came ROBERT HOFFMAN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2b.

2902

SUPREME COURT,

NEW YORK COUNTY.

In the matter of the general assignment for the benefit of creditors of

PAUL HYMOWITZ

to

SAMUEL S. KOLMAN,

Assignee.

2903

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ, under an assignment made the 22nd day of March, 1937, do hereby retain ROBERT HOFFMAN, as my attorney in this proceeding.

Dated, the 24th day of March, 1937.

Samuel S. Kolman

City, County & State of New York—ss.:

2904

On the 24th day of March, 1937, before me came SAMUEL S. KOLMAN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2C.

2905

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 19th day of November, 1937.

Present: HON. ARON STEUER, *Justice*.

In the Matter of the General Assignment for the Benefit of Creditors of 2906

PAUL HYMOWITZ

—to—

SAMUEL S. KOLMAN,

Assignee.

Upon reading and filing the annexed affidavit of Samuel S. Kolman, the assignee herein, duly sworn to the 18th day of November, 1937, and it appearing that the assignee's final report and account has been filed in this proceeding, and upon all the proceedings heretofore had herein, 2907

Now, on motion of Robert Hoffman and Goldman, Malter & Goldman, attorneys for the assignee, it is

ORDERED that notice issue herein to all creditors named in the schedules filed in this Court by the assignee, and to all creditors who have filed their claims with the assignee, and to the assignor and the surety on the assignee's bond, and to all parties interested in the Estate, of the time and place of filing the assignee's account and of the hearing thereof at Special Term, Part I of this Court, to be held at

2908 the Courthouse thereof, at Pearl and Centre Streets, in the Borough of Manhattan, City and State of New York, on the 7th day of December, 1937, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at which time and place they shall show cause why the assignee should not be permitted to settle the claim of the assignor against the Emergency Relief Bureau of the City of New York, in the sum of Two hundred ($200.00) Dollars, and why said settlement should not be allowed and approved, and why a further order should not be made permitting the assignee to settle the claims of the City of New York for taxes in the sum of Three hundred eight and 46/100
2909 ($308.46) Dollars, and why said settlement should not be allowed and approved, and why the account of the assignee as filed herein should not be settled and allowed, and why such other, further and different relief should not be granted as to this Court may seem just and equitable, and it is further

ORDERED that service of the foregoing notice be made by mailing a copy of said notice to each of the creditors who have filed their claims with the assignee and to all creditors who appear in the schedules filed in this Court by the
2910 assignee, and to the assignor, and to the surety on the bond of the assignee, and to all parties interested in the Estate, with postage thereon prepaid, so that notice shall be received by them at least ten (10) days before the return date of said motion, with envelopes endorsed as specified in Special Term Rule 12, Subdivisions 14 and 27.

Enter,

A. S.
J. S. C.

971

Government's Exhibit 2c.

SUPREME COURT 2911

OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ

—to—

SAMUEL S. KOLMAN,

Assignee. 2912

State of New York,
City of New York,
County of New York—ss.:

SAMUEL S. KOLMAN, being duly sworn, deposes and says: That he is the assignee herein.

That on the 22nd day of March, 1937, the above named assignor made, executed and delivered a general assignment of all his assets and property for the benefit of his creditors to your deponent. 2913

That said assignment was filed in the office of the Clerk of the County of New York on the 24th day of March, 1937.

Deponent filed his bond, duly approved by a Justice of this Court, and duly qualified as assignee. That thereafter, deponent duly filed schedules.

That on the 22nd day of June, 1937, an order was granted by this Court authorizing deponent to advertise for the presentation of claims by the creditors. That thereafter, and pursuant to such order, deponent caused to be published an advertisement in the New York Law Journal,

2914 notifying all creditors to present their claims, with vouchers therefor duly verified, on or before July 27th, 1937.

That on the 25th day of June, 1937, a copy of said notice was mailed to all the creditors of the above named assignor.

That the time of the creditors to file their claims has expired.

On this application to pass and allow the assignee's account, deponent also respectfully asks for permission to settle the claim of the assignor against the Emergency Relief Bureau of the City of New York, which was in the
2915 sum of $225.50, for the sum of $200.00, and to approve and allow said settlement as made, and to permit the assignee to execute any and all necessary papers in the premises. The reason this claim was settled for the sum of $200.00 was because the assignor had gotten into difficulty with the authorities with respect to the relief vouchers, and the Bureau questioned the authenticity of the amounts.

Under the circumstances, deponent believes that such settlement is more than fair.

The Emergency Revenue Division of the Department of Finance of the City of New York filed a claim with the
2916 assignee against the assignor for City Sales taxes due for sums amounting to more than One thousand ($1,000.00) Dollars. The assignee opposed the claims, and a hearing was had thereon, at which hearing the amount was adjusted to the sum of $308.46. Said sum, in deponent's opinion, is a fair determination of the taxes due, and deponent respectfully asks that he be permitted to settle the claims of the City of New York for taxes in the sum of $308.46, and that said settlement be approved and allowed.

Deponent respectfully states that he will incur further disbursements in connection with this Estate in the sum

Government's Exhibit 2c.

of about Two ($2.00) Dollars, for postage for the mailing of notices to creditors of the filing of the account herein and for distribution of dividend checks to them, and deponent asks that said amount be allowed to him in addition to his fees. 2917

That to the best of deponent's knowledge, there are no suits pending nor is there any further duty upon the part of the assignee to perform except to have the account finally settled and distribution made.

That to the best of deponent's knowledge, there are no petitions in bankruptcy, either voluntary or involuntary, filed by or against the assignor herein at the present time. 2918

WHEREFORE, deponent prays that the annexed order be signed, and that notice issue to the creditors, the assignor and the surety on the assignee's bond, to show cause why they should not be required to attend the judicial settlement and final accounting, and why the settlement as made should not be approved and allowed, and why said account should not be settled and allowed and distribution made, and for such other and further and different relief as to this Court may seem just and equitable, for all of which no previous application has been made. 2919

Samuel S. Kolman

Sworn to before me this
18th day of November, 1937.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's No. 498
Term Exp. 3/30/38

Government's Exhibit 2d.

2920

SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the benefit of the creditors of

PAUL HYMOWITZ.

Assignor.

—to—

SAMUEL S. KOLMAN.

2921

Assignee.

TO THE CLERK OF THE SUPREME COURT,
SPECIAL TERM, PART II:

SIR:

PLEASE TAKE NOTICE, that we appear in the proceedings as co-attorneys for the assignee, pursuant to the annexed retainer, duly executed and acknowledged.

Dated, New York, May 5, 1937.

2922

GOLDMAN MALTER & GOLDMAN
BY: Theodore Goldman
Robert Hoffman
Attorneys.

Government's Exhibit 2d.

State of New York,
County of New York—ss.: 2923

On the 5th day of May, 1937, before me personally appeared THEODORE GOLDMAN, a member of the firm of GOLDMAN, MALTER & GOLDMAN, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as a member of the firm of GOLDMAN, MALTER & GOLDMAN.

Sanford Jarett
SANFORD JARETT 2924
Notary Public, New York County
New York Co. Clerk's No. 26, Reg. No. 8J27
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

State of New York,
County of New York—ss.:

On the 5 day of May, 1937, before me personally appeared ROBERT HOFFMAN, to me known and known to me to be the individual mentioned and described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same. 2925

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38

Government's Exhibit 2d.

2926

SUPREME COURT.

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ.

Assignor.

—to—

SAMUEL S. KOLMAN.

2927

Assignee.

TO THE CLERK OF THE SUPREME COURT,
SPECIAL TERM, PART II:

SIR:

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ under an assignment made the 24th day of March, 1937, and filed in the office of the Clerk of the County of New York on the 24th day of March, 1937, do hereby retain GOLDMAN, MALTER & GOLDMAN and ROBERT HOFFMAN, as my attorneys in these proceedings.

2928

Dated: New York, May 5, 1937.

Samuel S. Kolman
Assignee

Government's Exhibit 2d.

State of New York,
County of New York—ss.: 2929

On this 5 day of May, 1937, before me personally came SAMUEL S. KOLMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Meyer Parodnick
Notary Public
N. Y. Co. Clk's #498
Term Exp. 3/30/38 2930

2931

Government's Exhibits 2d and 3.

Index No. 12-415.

2932

SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

Assignee.

2933

NOTICE OF APPEARANCE AND RETAINER

GOLDMAN MALTER & GOLDMAN and
ROBERT HOFFMAN
Attorneys for Assignee
Office and Post Office Address
302 Broadway
Borough of Manhattan New York City

To , Esq.
Attorney for

Due and proper service of a copy of the within
2934 is hereby admitted.

Dated, New York 193

Attorney for

FILED
Jun 1 1937
Assignment Bureau
New York Supreme Court

Government's Exhibit 3.
PHOTOSTAT OF PETITION.

(Opposite) ☞

2042B—Involuntary Petition in Bankruptcy

J. Sheridan Stationery & Printing Co., Inc. 116 Broadway, N. Y. Tel.

UNITED STATES DISTRICT COURT.
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

PAUL HIMOWITZ

Alleged Bankrupt.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PETITION OF the undersigned

respectfully shows:

That PAUL HIMOWITZ, has

for the greater part of six months next preceding the date of the filing of this petition, had his principal place of business at No. 346 Bowery in the Borough of Manhattan City of New York County of New York and State of New York, Southern District of New York and is neither a wage earner, nor a person engaged principally in farming or tillage of the soil or a municipal, railroad insurance or banking corporation and owes debts in the sum of one thousand ($1,000) dollars or over and has been engaged in the business of selling men's wearing apparel at retail at 346 Bowery, New York City.

That your petitioners are creditors of said alleged bankrupt having provable claims against said alleged bankrupt amounting in excess to the value of securities held by them to over Five Hundred ($500) Dollars and that the nature and amount of your petitioners' claims and the securities held by them, if any, are as follows:

The claim of your petitioner ABRAHAM SCHWARTZ and SAMUEL ZUCKERMAN is for goods sold and delivered to the said alleged bankrupt within the past six months of the agreed price and reasonable value of upwards of $88.00

The claim of your petitioner NATHAN RIBACH and SAMUEL MANTIS is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of 117.00

The claim of your petitioner AARON KHEISELMAN, JACOB KHEISELMAN, and HARRY KHEISELMAN, copartners, trading as e. KHEISELMAN & SON is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of 158.00

The claim of your petitioner HARRY LEVY is [illegible] for goods sold and delivered to the said alleged bankrupt within the past six months, of the agreed price and reasonable value of upwards of $ 250.00

The claim of your petitioner is (upon an assigned claim) for the said bankrupt within the past six months value of upwards of $

Your petitioner further allege that the said alleged bankrupt while insolvent and within four months next preceding the filing of this petition and while insolvent as aforesaid, committed an act of bankruptcy in that he did the following acts:

1. That the alleged bankrupt with intent to hinder, delay or defraud his creditors and with intent and for the purpose of giving a preference contrary to the provisions of the Bankruptcy Act and upon pretended and alleged antecedent indebtedness claimed or alleged to be due from the said alleged bankrupt to divers persons, firms and corporations, transferred and set over unto said divers persons, firms and corporations whose names are unknown to your petitioners valuable property, consisting of money, merchandise, accounts and dues receivable of the value of $500.00 applicable to the payment of the debts of the said alleged bankrupt

2. That while insolvent as aforesaid the said alleged bankrupt transferred various moneys amounting in the aggregate to the sum of $ 500.00 to various of his creditors with intent thereby to prefer such creditors over other creditors of the same class, the names of such preferred creditors being unknown to your petitioners.

3. That said alleged bankrupt while insolvent suffered and permitted a creditor herein, to obtain a preference through legal proceedings and that said alleged bankrupt not vacated or discharged such preference within five days before a sale or final disposition of the property affected by such preference.

4. That said alleged bankrupt while insolvent, suffered and permitted a creditor herein, to obtain through legal proceedings a levy or (attachment) or (judgment) or (lien) and did not vacate or discharge same within 30 days from the date said was obtained

5. That on or about the day of 193 , while insolvent, and within four months next preceding the date of the filing of this petition, the alleged bankrupt admitted in writing inability to pay just debts in full and willingness to be adjudged bankrupt upon that ground, and that hereto annexed is a copy of said admission and made part hereof

6. That on or about the day of 193 the alleged bankrupt above named made an assignment for the benefit of Creditors, to which assignment was recorded in the office of the Clerk of the County of on the day of 193

7. That on or about the day of 193 , and while insolvent, was duly appointed Receiver or (Trustee) of the assets of the alleged bankrupt and was put in charge of his property by virtue of proceedings instituted in the Court

8. That there are more (less) than twelve creditors in number of said alleged bankrupt.

WHEREFORE, your petitioners pray that service of this petition with a subpoena may be made upon the said alleged bankrupt as provided by the Acts of Congress relating to Bankruptcy, and that PAUL HYMOWITZ may be adjudged by the Court to be bankrupt within the purview of said Acts.

Dated the 3rd day of April 1937

ABRAHAM SCHWARTZ and SAMUEL ZUCKERMAN, trading as SCHWARTZ AND ZUCKERMAN

BY Jacob P. Shulman
Attorney in Fact

NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH AND MANTIS

BY Jacob P. Shulman
Attorney in Fact

AARON KREISELMAN, JACOB KREISELMAN and HARRY KREISELMAN, copartners, trading as A. KREISELMAN & SON

BY: Jacob Kreiselman
Harry Kreiselman

JACOB P. SHULMAN
Attorney and Solicitor for Petitioners
Office and Post Office Address:
277 Broadway
New York City.

[redacted]

SOUTHERN District of NEW YORK

JACOB P. SHULMAN, being duly sworn, says: that he is the attorney in fact for SCHWARTZ AND ZUCKERMAN one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in foregoing petition are true. That he is duly authorized to execute this petition as attorney in fact for SCHWARTZ AND ZUCKERMAN.

Jacob P. Shulman

Subscribed and sworn to before me this 3rd day of April 1937

Sanford Jarett

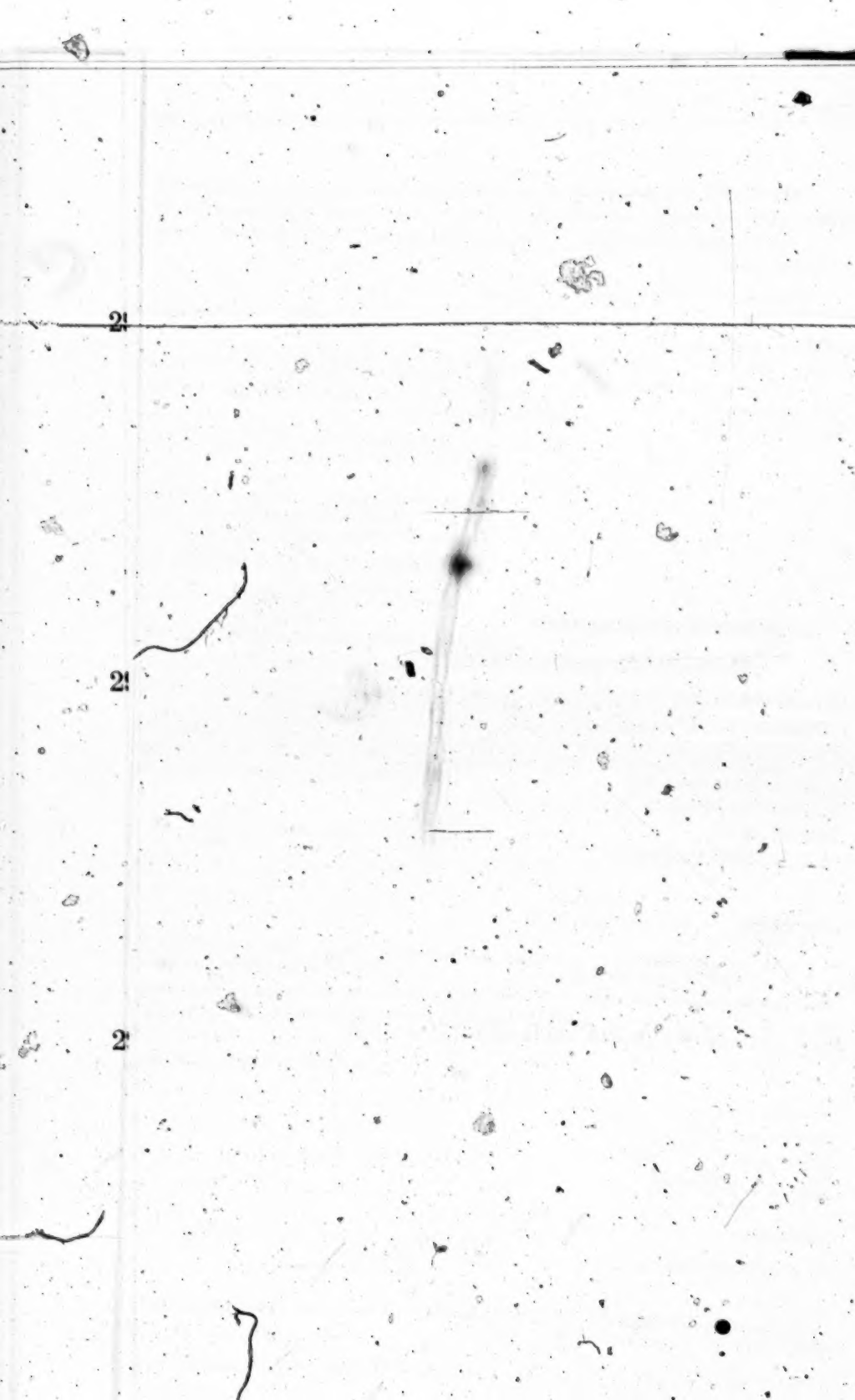
SOUTHERN District of NEW YORK

, being duly sworn, says: that he is a member of the copartnership trading as A. KREISELMAN & SON, one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in foregoing petition are true. That he is duly authorized to execute this petition as a copartner of A. KREISELMAN & SON.

Jacob Kreiselman

Subscribed and sworn to before me this 3rd day of April 1937

Sanford Jarett
SANFORD JARETT



SOUTHERN DISTRICT OF NEW YORK:

JACOB P. SHULMAN, being duly sworn, says: that he is the attorney in fact for RIBACH AND MANTIS, one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in the foregoing petition are true. That he is duly authorized to execute this petition as attorney in fact for RIBACH AND MANTIS.

Jacob Shulman

Subscribed and sworn to
before me this)
day of April, 1937.

SANFORD JARETT
NOTARY PUBLIC, NEW YORK COUNTY
New York Co. Clerk's No. 76, Reg. No. 8,327
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

SOUTHERN DISTRICT OF NEW YORK:

HARRY LEVI being duly sworn, says: that he is one of the petitioning creditors named and described in the foregoing petition does hereby make solemn oath that the statement contained in the foregoing petition are true.

Subscribed and sworn to
before me this)
day of April, 1937.

Harry Levi

SANFORD JARETT
NOTARY PUBLIC, NEW YORK COUNTY
New York Co. Clerk's No. 76, Reg. No. 8,327
Cert. filed in Kings Co. Clk's No. 62
Term Expires March 30, 1938

UNITED STATES DISTRICT COURT
SOUTHERN District of NEW YORK

In the Matter of

PAUL HYMOWITZ

Alleged Bankrupt

INVOLUNTARY PETITION IN BANKRUPTCY

JACOB P. SHULMAN
Attorney for Petitioning Creditors,
277 Broadway,
N.Y.C.

67 875

APR 1937

Government's Exhibit 3.

2938 At a Stated Term of the United States District Court for the Southern District of New York, held at the Courthouse, located at Foley Square, in the Borough of Manhattan, City and State of New York, on the 3rd day of April, 1937.

Present: HON. ALFRED C. COXE, *District Judge.*

In Bankruptcy No. 67875.

2939 In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

Upon reading and filing the annexed petition of Ribach & Mantis, by Jacob P. Shulman, its duly authorized attorney in fact, verified the 3rd day of April, 1937, and upon all the papers and proceedings heretofore had herein, it is on motion of JACOB P. SHULMAN, attorney for the petitioning creditors,

2940 ORDERED, that SAMUEL S. KOLMAN, assignee and his attorney ROBERT HOFFMAN, Esq., and GABRIEL WISHBOW, the auctioneer, be and they hereby are jointly and severally enjoined and restrained from proceeding with the sale of the assets under the assignment proceeding for the benefit of creditors filed in the office of the Clerk of New York County on the 24th day of March, 1937, until further order of this Court.

ALFRED C. COXE
U. S. D. J.

Government's Exhibit 3.

UNITED STATES DISTRICT COURT, 2941

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN 2942
DISTRICT OF NEW YORK

The petition of NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH & MANTIS, a creditor herein, by JACOB P. SHULMAN, its attorney in fact, respectfully shows and alleges:

1. That on the 3rd day of April, 1937 an involuntary petition in bankruptcy was filed against the above named alleged bankrupt in this Court.

2. The alleged bankrupt formerly operated a retail army and navy goods store at 346 Bowery, in the Borough of 2943
Manhattan, City and State of New York.

3. That on the 24th day of March, 1937, the alleged bankrupt executed a general assignment for the benefit of creditors and notice of sale was sent out in the assignment proceeding that the assets would be sold at auction sale on April 5th, 1937 at 10:30 A. M.

4. After the filing of the assignment for the benefit of creditors a meeting of creditors was held at the Dry Goods & Furnishing Association at which time creditors expressed their dissatisfaction with the liquidation of the estate in

2944 the assignment proceeding and suggested that the assets of the alleged bankrupt be inspected for the purpose of determining the value based upon which the debtor or the alleged bankrupt was to offer a settlement. Subsequently thereto, the premises were opened for inspection and the assets were inspected by the various prospective buyers.

5. The attorney for the alleged bankrupt now refuses to make any offer of settlement and insists upon a liquidation of the assets in the assignment proceeding.

6. In view of the fact that the creditors are opposed to the liquidation of the estate in the assignment proceeding
2945 your petitioner desires to have the annexed order signed in order to stay the assignee from proceeding with sale under the assignment proceeding so that in the event that no settlement is made that an application for the appointment of a receiver in bankruptcy may be applied for and the assets sold under the supervision of this Court.

WHEREFORE, petitioner prays that the annexed order be signed for which no previous application has been made.

Dated, New York, April 3rd. 1937.

2946 RIBACH & MANTIS.
BY: JACOB P. SHULMAN (sgd)
Attorney in Fact.

Government's Exhibit 3.

State of New York, 2947
County of New York—ss.:

JACOB P. SHULMAN, being duly sworn, says:

That he is the attorney in fact of NATHAN RIBACH and SAMUEL MANTIS, trading as RIBACH & MANTIS, the petitioner herein. That he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

JACOB P. SHULMAN (sgd) 2948

Sworn to before me this
3rd day of April, 1937.

Sanford Jarett,
Notary Public, New York County
N. Y. Co. Clk. No. 26, Reg. No. 8J27
Cert. filed in Kings Co. Clk. No. 62
Term. exp. Mar. 30, 1938

2949

Government's Exhibit 3.

2950 UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

SIR:

2951 PLEASE TAKE NOTICE that, upon the annexed affidavit of ROBERT HOFFMAN, sworn to the 5th day of May, 1937, and upon a copy of the involuntary petition in bankruptcy, filed herein against the above named alleged bankrupt, and upon all the proceedings heretofore had herein, the undersigned will move this Court at a Motion Term thereof, to be held at the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 12th day of May, 1937, at 10:30 A. M. o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the involuntary petition in bankruptcy filed herein against the alleged
2952 bankrupt, and for such other and different relief as to this Court may seem just and proper in the premises.

Dated: New York, May 6th, 1937.

Yours, etc.,

ROBERT HOFFMAN
Attorney for Alleged Bankrupt
Office & P. O. Address
1270 Broadway,
Borough of Manhattan,
City of New York

Government's Exhibit 3.

To: 2953

JACOB P. SHULMAN
Attorney for Petitioning Creditors
277 Broadway
New York City

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter 2954

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

State of New York,
County of New York—ss.:

ROBERT HOFFMAN, being duly sworn, deposes and says:

That he is the attorney for the alleged bankrupt herein. 2955

That an involuntary petition in bankruptcy was filed in the office of the Clerk of the United States District Court, Southern District of New York against the above named alleged bankrupt on April 3rd, 1937.

That annexed hereto is a copy of the said involuntary petition.

That the said petition does not state facts sufficient to warrant the granting of the relief prayed for therein.

That the said petition is dismissable on the ground that the allegations contained therein are insufficient in that there are no specific allegations of acts of bankruptcy and that

Government's Exhibit 3.

2956 the general allegations are insufficient to apprise the alleged bankrupt of the charge that he is called upon to meet and the said petition is therefor subject to challenge by demurrer or motion to dismiss.

That your deponent relies upon this conclusion upon the following cases:

In re Rosenblatt & Co., 193 Fed. 638
In Re Condon, 209 Fed. 890
In Re Fuller, 15 Fed. (2d), 294;

and Matter of Gaynor Homes Inc., 65 Fed. (2d) 378, de-
2957 cided by the Circuit Court of Appeals, Second Circuit, on May 1st, 1933, in which the Court said referring to the general allegations similar to the allegations contained in the involuntary petition in bankruptcy herein:

> "But, under repeated rulings of this Court allegations such as those set out above are insufficient to apprise the bankrupt of the charge he is called upon to meet; and the petition is therefore subject to challenge by demurrer or motion to dismiss."

Your deponent respectfully prays for an order dismissing the involuntary petition in bankruptcy filed herein.

2958 That no previous application for the relief herein sought has been made.

ROBERT HOFFMAN (sgd)

Sworn to before me this
5th day of May, 1937.

Meyer Parodnick
Notary Public
N. Y. Co. Clk. No. 498
Comm exp. 3/30/38

Government's Exhibit 3.

UNITED STATES DISTRICT COURT, 2959

SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy #67875.

In the Matter

—of—

PAUL HYMOWITZ,

Alleged Bankrupt.

1. Motion to dismiss involuntary petition in bankruptcy. 2960

2. Motion returnable May 12, 1937.

For the Motion
Robert Hoffman
Attorney for Alleged Bankrupt
Office & P. O. Address
1270 Broadway
New York City

In Opposition Thereto
Jacob P. Shulman 2961
Attorney for Petitioning Creditors
Office & P. O. Address
277 Broadway
New York City

Government's Exhibit 3.

2962 At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 14th day of May, 1937.

Present: HON. JOHN W. CLANCEY, *District Judge.*

67875

In the Matter

—of—

2963 PAUL HYMOWITZ,

Alleged Bankrupt.

An application having been made for the dismissal of the involuntary petition in bankruptcy heretofore filed herein against the above named alleged bankrupt on April 3rd, 1937,

NOW, upon reading and filing the notice of motion dated May 6th, 1937, the affidavit of Robert Hoffman, sworn to the 5th day of May, 1937 and upon the involuntary petition
2964 in bankruptcy heretofore filed herein and it appearing to the satisfaction of the Court that due notice was given to the attorney for the petitioning creditors herein and no one appearing in opposition to said motion, it is now on motion of ROBERT HOFFMAN, attorney for the alleged bankrupt,

ORDERED, that the involuntary petition to have PAUL HYMOWITZ adjudicated a bankrupt and the proceedings thereon be and the same are hereby dismissed.

John W. Clancy
U. S. D. J.

Government's Exhibit 4.

STIPULATION. 2965

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2966

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature of Jacob P. Shulman appearing in the petition in bankruptcy in the matter of Paul Hymowitz, a photostatic copy of which is attached hereto, is the signature of the defendant Jacob P. Schulman.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants 2967
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

2968

STIPULATION.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2969

IT IS HEREBY STIPULATED, AGREED AND ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 19, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

2970

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

STIPULATION

2971

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2972

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 4, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants 2973
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant,
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 4.

2974

STIPULATION.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

2975

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that the signature appearing on the letter dated May 7, 1937 from Goldman, Malter & Goldman to Robert Hoffman, of which a photostatic copy is attached hereto, is the signature of the defendant Theodore Goldman.

Dated: New York, N. Y., June 5, 1940.

2976

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for Defendant
Jacob P. Schulman.

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

.....
United States Attorney.

Government's Exhibit 5.

2977

Please take notice, that a meeting of the creditors of Paul Hymowitz of 346 Bowery, Manhattan, New York City will take place on Thursday, March 25, 1937, at 4 PM, sharp at the offices of Dry Goods & Furnishings Association, Inc., at 175 5th Avenue, Manhattan, New York City, Room 1715.

Yours, etc.,

ROBERT HOFFMAN,
Attorney for Assignee;
1270 Broadway, New York. 2978

2979

Government's Exhibit 5a.

2980

LAW OFFICES OF
ROBERT HOFFMAN
1270 Broadway
New York City

March 24, 1937

Gentlemen: re: Paul Hymowitz, 346 Bowery, N. Y. C.

I desire to advise you that on the 22nd day of March, 1937, Paul Hymowitz made a general assignment for the benefit of his creditors to Samuel S. Kolman, of 1270 Broadway, Manhattan, New York City.

2981 I desire to inform you of the reasons for the necessity of the making of this assignment.

Briefly, Paul Hymowitz, on or about the 18th day of March, 1937, in the Court of Special Sessions in the City of New York, was sentenced to serve an indeterminate term and is now confined to the penitentiary at Riker's Island. Although neither Mr. Kolman nor myself represented Paul Hymowitz in this criminal action, I have been informed that the charges which were made against him, and upon which he was convicted, were groundless, and that efforts are being made in his behalf to see that justice is done.

Nevertheless, a situation developed which required immediate action. As most all creditors know, the business which was conducted by Paul Hymowitz at 346 Bowery, Manhattan, New York City, was in existence for the past twenty years or more. Paul Hymowitz succeeded to the business after the death of his father, which occurred about five or six years ago.

2982

The widowed mother of Paul Hymowitz made a futile atempt to conduct the business after her son Paul was convicted. Being in poor health and worn by worries over her son's difficulties, and further by reason of poor business conditions due to unseasonable weather, there was no hope of continuing this business without detrimental consequences to creditors.

Government's Exhibit 5a.

It is the wish of Paul Hymowitz that his business be 2983
liquidated so that the creditors shall receive the greatest possible benefit and has entrusted Mr. Kolman with carrying out his wishes.

Accordingly, a conference was had with Mr. Hymowitz at Riker's Island on the night of March 22nd, 1937, at which time additional information was secured as to the condition of the business, etc. Thereafter, an appraisal was had and it is estimated that the cost value of the merchandise and stock in the store is of the approximate value of about Twenty-two hundred to Twenty-five hundred dollars. There is also on hand Emergency Relief Bureau vouchers of the value of approximately Two Hundred and fifty dollars, 2984
which, when presented to the City, will realize that sum to the Estate. We are informed that the City is also indebted to Paul Hymowitz in the further sum of approximately Two hundred dollars in connection with other relief vouchers. Of course, there are fixtures which may or may not have any value. Accordingly, then, the assets would appear to be about Twenty-seven hundred to Three thousand dollars. The liabilities, as we are informed by Mr. Hymowitz, approximate about Twenty-five hundred dollars.

It is our purpose to see that a thorough and proper administration is had and that creditors shall realize as close 2985
to one hundred per cent of their claims as possible.

Keeping in mind the above facts as set forth and the conditions under which the assignment was made, we ask for your cooperation towards a speedy and thorough administration of this estate.

We shall be pleased to have you make any inquiry which you may desire for any other and further information.

Very truly yours,

Robert Hoffman

rh/ad

Government's Exhibit 5c.

2986.

Supreme Court, New York County.

In the matter of the general assignment for the benefit of creditors of Paul Hymowitz to Samuel S. Kolman, Assignee.

Please take notice, that the undersigned will sell at public auction, by Gabriel Wishbow, auctioneer, on the 5th day of April, 1937, at 10:30 AM at No. 346 Bowery, in the Borough of Manhattan, City of New York, assets of the above named assignor, consisting of army and navy goods, fixtures, etc.

2987

Samuel S. Kolman, Assignee

Robert Hoffman
Attorney for Assignee
1270 Broadway
New York City

2988

Government's Exhibit 6.

SUPREME COURT, 2989

NEW YORK COUNTY.

In the Matter of the General Assignment for the benefit of the creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

Assignee. 2990

TO THE CLERK OF THE SUPREME COURT, SPECIAL TERM, PART II:

SIR:

I, SAMUEL S. KOLMAN, as assignee of PAUL HYMOWITZ, under an assignment made the 24th day of March, 1937, and filed in the office of the Clerk of the County of New York on the 24th day of March, 1937, do hereby retain GOLDMAN, MALTER & GOLDMAN and ROBERT HOFFMAN, as my attorneys in these proceedings. 2991

Dated: New York, March 25th, 1937.

.....

Assignee.

State of New York,
County of New York—ss.:

On this 25th day of March, 1937, before me personally came SAMUEL S. KOLMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Government's Exhibit 7.

2992

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

2993

—to—

SAMUEL S. KOLMAN,

Assignee.

The undersigned, assignor, hereby consents to the designation of SAMUEL I. KANDELL as co-assignee in the above entitled proceeding.

Dated, New York, March , 1937.

2994

.....

ASSIGNOR.

.....

ASSIGNOR.

Government's Exhibit 8.

2995

KNOW ALL MEN BY THESE PRESENTS, That I, PAUL HYMOWITZ, formerly of No. 105 West 168th Street, in the Borough of Bronx, City and State of New York, and having a place of business at No. 346 Bowery, in the Borough of Manhattan, County of New York and City and State of New York, party of the first part, for and in consideration of the sum of Twelve hundred and no/100 ($1200.00) Dollars in lawful money of the United States and other valuable consideration to me in hand paid at or before the ensealing and delivery of these presents by L. Wein, of 430 Grand St. Manhattan N. Y. City, party of the second part, the receipt whereof is hereby acknowledged, 2996
have bargained and sold and by these presents do grant and convey unto the said party of the second part, his executors, administrators, successors and assigns, all my right, title and interest in and to the fixtures, stock and merchandise consisting of army and navy men's general merchandise as now contained in store premises at 346 Bowery, Manhattan, New York City.

To have and to hold the same unto the said party of the second part, his executors, administrators, successors and assigns forever.

And I do, for myself, my heirs, executors and administrators, covenant and agree to and with the said party of 2997
the second part, to warrant and defend the sale of the said stock and merchandise, as aforesaid, hereby sold unto the said party of the second part, his executors, administrators, successors and assigns, against any and every person and persons whomsoever.

The foregoing is subject to a conditional sales agreement or chattel mortgage now a lien on the cash register which is part of the assets hereby sold.

Government's Exhibit 8.

2998 IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of April, 1937.

WITNESS:

Paul Hymowitz (L.S.)
Paul Hymowitz

State of New York,
County of New York—ss.:

2999 On this 20th day of April, 1937, before me personally came PAUL HYMOWITZ, to me known to be the individual described in, and who executed the foregoing instrument and he acknowledged that he executed the same.

Charles C. Groppe
Notary Public
Comm. of Deeds N. Y. City
N. Y. Co. Clks #226
Comm. Expires 11/24/38

3000

Government's Exhibit 9.

3001

State of New York,
City of New York,
County of New York—ss.:

PAUL HYMOWITZ, formerly of No. 105 West 168th Street, in the Borough of Bronx, City and State of New York, and having a place of business at No. 346 Bowery, in the Borough of Manhattan, City and State of New York, County of New York, do hereby state that the Schedule hereto annexed sets forth all the creditors of the business which I conducted at 346 Bowery, Borough of Manhattan, City, County and State of New York.

3002

Paul Hymowitz (L.S.)
Paul Hymowitz

State of New York,
City of New York,
County of New York—ss.:

On this 20th day of April, 1937, before me personally came PAUL HYMOWITZ, to me known to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.

3003

Charles C. Groppe
Notary Public
Comm. of Deeds, N. Y. City
N. Y. Co. Clks #226
Comm. Expires 11/24/38

Government's Exhibit 9.

3004 LIST OF CREDITORS

	Approximate Amount
Wolf Appleton, 566 Broadway, N. Y.	$ 84.64
Bort Shirt Co., 442 Broadway, N. Y.	56.27
Brooklyn Overall Co., 276-86 Dumont Av. Brooklyn, N. Y.	73.51
Butler Bros., 860 Broadway, N. Y.	403.83
Endicott Johnson Corporation, 155 West Broadway, N. Y.	236.38
Forman Wholesale Corp., 14 Orchard Street, N. Y.	80.83
3005 Consolidated Edison Co. of N. Y. Inc., 4 Irving Place, N. Y.	21.05
N. Y. Telephone Co., 140 West Street, N. Y.	27.03
Mayer & Wertheim, 41 E. 42nd Street, N. Y.	44.43
A. Kaplan, 268 Stockton St., Bklyn., N. Y.	14.85
A. Kreiselman & Sons, 36 Orchard St., N. Y.	158.50
Harry Levy, 122 West Broadway, N. Y.	211.57
National Cash Register, Dayton, Ohio Bal.	60.00
A. Rosen, 38 Great Jones St., N. Y.	9.00
Schwartz & Zuckerman, 15 Orchard St., N. Y.	85.88
Samuel Siff, 510 Broadway, N. Y.	102.86
3006 J. Turetsky, Inc., 47 Canal St., N. Y.	44.50
Trenton Shirt Manufacturing Co., 614-16 Warren St. Trenton, N. J.	179.30
The Union Pants & Overall Mfg. Co., Bordentown, N. J.	29.50
M. Shafiff, 103 Norfolk St., N. Y.	10.50
Riback & Mantis, 17 Orchard St., N. Y.	117.76
Helen R. Hobbie, c/o Burke & Burke, 72 Wall Street, N. Y.	150.00
H. Rabinowitz, c/o Synagogue, 65 E. 3 St. N. Y. (Res.) 99 E. 4 St., N. Y.	112.50
Max Horowitz, 34 Bond Street, N. Y.	10.00

Government's Exhibit 9.

	Approximate Amount
Roth & Co., 56 Orchard Street, N. Y.	49.00
H. D. Lee Mercantile Co., Trenton, N. J.	33.15
H. Shapiro, 331 Snediker Ave., Brooklyn, N. Y.	3.75
Lewis A. Rosen, 261 Broadway, N. Y.	
National City Bank, Bowery Branch, Bowery & Bond, N. Y.	205.00
City Sales Tax, 50 Lafayette Street, N. Y.	
The U. S. Window Cleaning Co., 53 East 4th Street, N. Y.	5.00

3007

3008

Paul Hymowitz
Paul Hymowitz

3009

Government's Exhibit 10.

3010 Received from Robert Hoffman, Esq. of 1270 Broadway, New York, bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with affidavit of the creditors, both instruments being signed and acknowledged on April 20th, 1937.

I am to transfer the said instruments to the purchaser of said property upon the dismissal of the pending bankruptcy proceedings and the assignment for the benefit of creditors heretofore made by said Hymowitz to one Samuel Kolman and said proceeds are to be paid to creditors on the basis of 40% of their respective claims, which shall be in
3011 full settlement and release of said claims. The fund is also to be used for the payment of administration fees and expenses, including the fees of Robert Hoffman, Esq., incurred in the matter.

Dated, New York, April 26th, 1937.

Jacob P. Shulman

as attorney for Paul Hymowitz in the foregoing proposed bulk sale and settlement, I hereby authorize the said Jacob P. Shulman to make distribution of the funds men-
3012 tioned in the foregoing instrument on the terms herein set forth.

4/26/37.

Robert Hoffman.

Government's Exhibit 11.

3013

April 26th, 1937.

Jacob P. Shulman, Esq.
277 Broadway,
New York City.

Dear Sir:

It is further understood that in connection with the proposed bulk sale and settlement with creditors that I will obtain and immediately transfer to Jacob P. Shulman, attorneys for creditors, the present outstanding claims or vouchers against the City of New York in favor of said Paul Hymowitz for the purpose of and to be included in the 3014
said plan of settlement as outlined in a certain letter dated April 26th, 1937 signed by Jacob P. Shulman.

Said Jacob P. Shulman agrees that the proceeds if and when received from the City of New York in connection with the foregoing, shall be used for the purpose as mentioned in said letter dated April 26th, 1937.

4/26/37.

Robert Hoffman

O. K. R. H. 4/26/37 3015

Government's Exhibit 12.

3016

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 4th, 1937.

Robert Hoffman, Esq.,
1270 Broadway,
3017 New York City.

Re: Paul Hymowitz

Dear Sir:

In accordance with your letter addressed to us dated April 26th, 1937 and in accordance with our telephone conversation today, we are enclosing herewith a retainer to be signed by Samuel S. Kolman, assignee and also a notice of appearance for you to sign together with an affidavit for you to sign in connection with the motion to dismiss the involuntary petition in bankruptcy.

3018 Please be good enough to have these papers signed and returned to us at once.

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY: Theo Goldman

TG:PM

Government's Exhibit 13.

3019

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 7th, 1937.

Robert Hoffman, Esq.
1270 Broadway
New York City

3020

RE: PAUL HYMOWITZ

Dear Sir:

Enclosed herewith is copy of notice of motion to dismiss the petition returnable on May 12th, 1937 at 10:30 A. M.

We have already served Mr. Shulman with a copy of the notice of motion and are arranging to file a note of issue and place the matter on the motion calendar.

We will appear in Court for you on the return day of the motion and enter the necessary order upon the granting of the motion.

3021

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY Theo Goldman

TG:EC
ENC.

Government's Exhibit 14.

3022

GOLDMAN, MALTER & GOLDMAN
Attorneys at Law
302 Broadway
New York

Martin M. Goldman
Harry Malter
Theodore Goldman

Telepone
BArclay 7-7897

May 19th, 1937.

Robert Hoffman, Esq.
1270 Broadway
3023 New York City

RE: PAUL HYMOWITZ

Dear Sir:

We are enclosing herewith copy of an order signed by Hon. John W. Clancy, District Judge on May 14th., 1937, dismissing the involuntary petition in bankruptcy heretofore filed against Paul Hymowitz.

We are also enclosing herewith bill of sale of Paul Hymowitz to A. Rothlein; letter addressed to Goldman, Malter & Goldman, in connection with the distribution of the monies received from the sale of the assets and from
3024 the City of New York, and an assignment by Paul Hymowitz to Goldman, Malter & Goldman of all monies due from the City of New York, all of which are to be executed by Paul Hymowitz.

Please be good enough to return these executed instruments as soon as they have been executed by Mr. Hymowitz.

Very truly yous,

GOLDMAN, MALTER & GOLDMAN
BY Theo Goldman

TG:E
ENC.

Government's Exhibit 14a.

May 19th, 1937.

Goldman, Malter & Goldman, Esqs. 3025
302 Broadway
New York City

RE: PAUL HYMOWITZ, 346 BOWERY, NEW YORK CITY

Gentlemen:

In connection with the sale of my business at 346 Bowery, New York City to A. Rothlein for the sum of $1500.00, I hereby turn over to you a bill of sale executed by me to A. Rothlein in connection therewith, and authorize you to obtain from A. Rothlein the sum of $1500.00 upon the delivery of the bill of sale, which bill of sale is not 3026
to be delivered and sale consummated until the dismissal of the general assignment for the benefit of creditors heretofore executed by me to Samuel S. Kolman, which sum of $1500.00 you are authorized to deposit in your account and use the said money for the following purposes:

1. To pay to all of my creditors set forth in the sworn list of creditors, dated April 20th, 1937, 40% of their claims, except the claim due to the City Sales Tax Bureau for retail sales tax, which is to be paid in full.

2. To pay all administration expenses, legal fees and disbursements in connection with the bankruptcy proceeding and the assignment for the benefit of creditors. 3027

It is understood that this sum of $1500.00, together with the monies due to me from the City of New York, is to be used for the above mentioned purposes and that no portion of this money will be claimed by me.

This letter will serve as authority to Samuel S. Kolman to turn over to you any monies in his possession as assignee to be used for the purposes hereinabove mentioned.

Very truly yours,

PAUL HYMOWITZ*

*Name Paul Hymowitz only typewritten in original exhibit.

Government's Exhibit 14b.

3028 State and County of New York—ss.:

On this day of May, 1937, before me personally appeared PAUL HYMOWITZ, to me known and known to me to be the individual described in and who executed the foregoing letter, and he duly acknowledged to me that he executed the same.

.....

Notary Public

Government's Exhibit 14b.

3029 KNOW ALL MEN BY THESE PRESENTS, THAT I, PAUL HYMOWITZ party of the first part, for and in consideration of the sum of ($1500.00) Fifteen Hundred and 00/100 Dollars, lawful money of the United States to me in hand paid, at or before the ensealing and delivery of these presents, by A. ROTHLEIN, party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said party of the second part, his executors, administrators, successors and assigns all of the merchandise consisting of army and navy goods, etc., now contained in store at 346 Bowery, New York City, together
3030 with any demands, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same.

TO HAVE AND TO HOLD the same unto the said party of the second part his executors, administrators, successors and assigns forever. And I, do for my heirs, executors and administrators, covenant and agree to and with the said party of the second part, to warrant and defend the sale of the said assets hereby sold unto the said party of the second part, his executors, administrators, successors and assigns, against all and every person and persons whomsoever.

Government's Exhibit 14b.

IN WITNESS WHEREOF, I have hereunto set my hand 3031
and seal this day of May, one thousand nine hundred and thirty-seven.

Signed, sealed and delivered
in the presence of

.....(L. S.)

.....(L. S.)

State of New York,
City of New York, 3032
County of New York—ss.:

PAUL HYMOWITZ being duly sworn, deposes and says that he resides at
in the Borough of , in the City of

That he is the same person who executed the within bill of sale.

That he is the sole and absolute owner of the property described in said bill of sale, and has full right to sell and transfer the same.

That the said property, and each and every part thereof, is free and clear of any liens, mortgages, debts or other 3033
incumbrances of whatsoever kind or nature, except as aforestated.

That he is not indebted to anyone and has no creditors except as set forth on the sworn list of creditors dated April 29th, 1937.

That there are no judgments existing against him, in any Court, nor are there any replevins, attachments or executions issued against him now in force; nor has any petition in bankruptcy been filed by or against him, except that an involuntary petition in bankruptcy was filed which was dismissed by the Court on May 14th, 1937.

Government's Exhibit 14b.

3034 That this affidavit is made for the purpose and with the intent of inducing A. ROTHLEIN to purchase the property described in said bill of sale, knowing that he will rely thereon and pay a good and valuable consideration therefor.

Sworn to before me
day of May 1937

..... (L. S.)

..... (L. S.)

3035 .....
Notary Public

State of New York,
County of New York,
City of New York—ss.:

On the day of May in the year one thousand nine hundred and thirty-seven before me personally came and appeared PAUL HYMOWITZ to me known, and known to me to be the person described in and who executed the within bill of sale, and he acknowledged to me that he executed the same.

3036

.....
Notary Public

Government's Exhibit 14c.

KNOW ALL MEN BY THESE PRESENTS, that the 3037
undersigned, PAUL HYMOWITZ, formerly in business at 346 Bowery, New York City, for and in consideration of the sum of One ($1.00) Dollar and other valuable considerations to it in hand paid by GOLDMAN, MALTER & GOLDMAN, attorneys, at 302 Broadway, in the Borough of Manhattan, City of New York, the receipt whereof is hereby acknowledged, hereafter referred to as the assignee, does hereby transfer, assign and set over unto the assignee, all sums which are due and hereafter become due from the City of New York or the State of New York or any other governmental department or agency in connection with Emergency Relief Bureau vouchers, issued by the 3038
City of New York, and or the Emergency Relief Bureau, which vouchers were heretofore turned over to PAUL HYMOWITZ.

In the event this assignment shall not be authorized under the laws of the State or municipality or under the rules or regulations of any governmental body, having jurisdiction in the premises, then, and in that event, this instrument shall be construed as though it were only an assignment of the monies receivable by PAUL HYMOWITZ from the Emergency Relief Bureau.

The undersigned, PAUL HYMOWITZ, agrees to hold in trust for the benefit of the assignee, and to immediately 3039
pay over to the assignee, upon the receipt thereof by PAUL HYMOWITZ, any and all sums so received by PAUL HYMOWITZ on account of any such Emergency Relief Bureau vouchers.

The undersigned, PAUL HYMOWITZ, further agrees to execute such papers and documents as may be necessary or requisite to enable the obtaining of such monies from the Emergency Relief Bureau.

In Witness Whereof, the undersigned has executed this assignment the day of May, 1937.

.....

Government's Exhibit 15.

3040 State of New York,
County of New York—ss.:

On the day of May, 1937, before me personally appeared PAUL HYMOWITZ, to me known and known to me to be the individual described in and who executed the foregoing assignment, and he duly acknowledged to me that he executed the same.

.....
Notary Public

3041 **Government's Exhibit 15.**

STIPULATION.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

—v—

3042 MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

IT IS HEREBY STIPULATED, AGREED and ADMITTED by and between the defendants in the above entitled action and the United States Attorney for the Southern District of New York that on or about May 13, 1937 the defendant Samuel Irving Kandell caused to be mailed within the Southern District of New York a letter to all the creditors of Paul Hymowitz including the Endicott-Johnson Corporation, enclosing therein a notice and

Government's Exhibit 15.

a form of consent to a settlement, of which the photostatic 3043
copies attached hereto are true and correct copies, and

FURTHER, that the copies attached hereto may be used in the trial of this action with the same force and effect as the originals.

Dated: New York, N. Y., June 5, 1940.

Harold H. Corbin
Attorney for Defendants
Martin M. Goldman and Theodore Goldman.

Phillips Mahoney & Fielding
Attorney for defendant 3044
Jacob P. Schulman

George J. Mintzer
Attorney for Defendant
Samuel Irving Kandell.

John T. Cahill
United States Attorney.

Letterhead of
THE DRY GOODS and FURNISHINGS ASSOCIATION, Inc.
175 Fifth Avenue New York City 3045
ALgonquin 4-6865

(Stamped on Face of Letter)
RECEIVED May 15 1937

May 13, 1937.

To the creditors of PAUL HYMOWITZ.
346 Bowery,
New York City.

Gentlemen:

Since the general assignment for the benefit of creditors, and the involuntary petition in bankruptcy was filed,

Government's Exhibit 15.

3046 numerous conferences were held with the attorney for the debtor, as a result of which, arrangements were made whereby the petition in bankruptcy would be dismissed and the assignment for the benefit of creditors vacated and a settlement of 40% in cash paid to the creditors through the sale of the debtor's assets.

We are enclosing herewith a form of consent to the dismissal of the assignment proceeding which you will please be good enough to sign at the places indicated and have same sworn to before a Notary Public and returned to us, together with an itemized statement of your account
3047 for verification.

It is necessary that this form be signed and acknowledged before a Notary Public and if your concern is a corporation then the corporation seal should be placed thereon. The first acknowledgment is for a corporation and the second acknowledgment for an individual or partnership.

We are also enclosing herewith a bulk sale notice for the purpose of consummating a sale of the assets, the monies from which will be used for the 40% cash settlement.

Please return these papers AT ONCE and oblige.

3048 Very truly yours,

THE DRY GOODS & FURNISHINGS ASSOCIATION INC.

Government's Exhibit 15.

May 13, 1937. 3049

Re: PAUL HYMOWITZ, 346 BOWERY, NEW YORK CITY, NEW YORK.

Gentlemen:

Please take notice that the undersigned will purchase from PAUL HYMOWITZ, all of the merchandise consisting of army and navy goods, fixtures, etc., now contained in store at 346 Bowery, New York City, New York, together with any demand, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same, for the sum of $1500.00 in cash to be 3050
paid at the time of closing.

The closing of the said sale will take place at the office of Goldman, Malter & Goldman, attorneys, 302 Broadway, New York City, New York, on Monday, May 24, 1937, at 9 A. M.

Very truly yours,

A. Rothlein, purchaser.

3051

Government's Exhibit 15.

3052 SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

3053 Assignee.

The undersigned, a creditor herein, does hereby consent to the entry of an order, vacating and dismissing the general assignment for the benefit of creditors, heretofore executed by PAUL HYMOWITZ, and all proceedings taken thereon, and further providing for the discharge of the assignee and the cancellation of his bond.

NAME OF CREDITOR	ADDRESS	AMOUNT
.....	.....	.....

3054 BY .....

Government's Exhibit 15.

State of
County of —ss.: 3055

On this..... day of....., 1937, before me personally came....., to me known, who being by me duly sworn, did depose and say that he resides in..... that he is the.....; of....., the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order. 3056

.....
Notary Public

State of
County of —ss.:

On this..... day of....., 1937, before me personally came....., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged 3057
to me that he executed the same.

.....
Notary Public

Government's Exhibits 16 and 17 for Identification.

3058 Affidavits (omitted by consent).

Government's Exhibits 18, 18a, 19, 19a, 20, 20a, 21 and 21a.

Bodinger's Notes and Transcripts of Bodinger (omitted pursuant to stipulation).

Government's Exhibit 22 for Identification.

New York, New York
November 29, 1939

3059

STATEMENT OF LOUIS ABRAMSON

I, LOUIS ABRAMSON, hereby make the following voluntary statement to Special Agents L. L. JUSKOW and S. S. RUBENSTEIN of the Federal Bureau of Investigation. I make this statement voluntarily upon my own free will and there have been no threats or promises made to me.

I reside at 2272 82nd Street, Brooklyn, New York, and conduct an auctioneering business at 430 Grand Street, New York City. Sometime in the spring of 1937 I believe I was called on the telephone by either MARTIN GOLDMAN, JACOB SHULMAN, PHILIP COHEN, or SAMUEL
3060 KANDELL, who asked me for an offer on the merchandise of the Army and Navy Store at 346 Bowery, New York City. I do not remember which of these men called. I gave them a figure, the amount of which I do not remember, as my offer. I do not recall which of these men I gave the offer to. My offer was never accepted and I never heard from them since.

I may have made a later offer, but I cannot state definitely whether I did or not. It is possible that I may have given one of the above mentioned parties my offer at the store at 346 Bowery, while I was looking over the stock, but I am not sure of this.

Government's Exhibit 22 for Identification.

There has been exhibited to me by Special Agent RUBENSTEIN and Special Agent JUSKOW a photostatic copy of a typewritten bill of sale, executed by PAUL HYMOWITZ on April 20, 1937, which bill of sale indicates that the stock of this store was sold to L. WEIN, 430 Grand Street, Manhattan, New York City, for the sum of $1200. 3061

The name of L. WEIN and address was written in this typewritten bill of sale in ink. L. WEINE, which is the correct spelling, is my brother-in-law and at times I use his name for business reasons in making offers. In this particular case, however, there may have been something said at the time the offer was made by me which caused me to mention the name of L. WEINE to either GOLDMAN, SHULMAN, COHEN, KANDELL, or perhaps another party in the store at the time. 3062

I have never seen this bill of sale before today. Whoever used the name of "L. WEIN" did so without my authority, as neither I nor L. WEINE had anything to do with the actual purchase of this stock, and therefore this bill of sale is not correct, so far as I am concerned or L. WEINE. I do not know who prepared this bill of sale. I gave no one the authority to prepare it and I know nothing about it whatsoever.

3063

I have read the foregoing statement consisting of two pages and the facts stated therein are true and correct to the best of my knowledge and belief.

Louis Abramson

WITNESS:
Leonard L. Juskow

Sidney S. Rubenstein
Special Agents
Federal Bureau of Investigation
607 U. S. Court House, Foley Square
New York, New York

Government's Exhibit 23 for Identification.

3064 Order to Show Cause (omitted pursuant to stipulation).

Government's Exhibit 24 for Identification.

Page 80 of Grand Jury Minutes (omitted pursuant to stipulation).

Government's Exhibit 25 for Identification.

Entire Transcript of Testimony of Theodore Goldman before Grand Jury (omitted pursuant to stipulation).

3065 **Government's Exhibit 26 for Identification.**

3 Newspaper Notices (omitted pursuant to stipulation).

Defendants' Exhibit A for Identification.

State of New York,
County of New York—ss.:

SAM RICH, being duly sworn deposes and says, that he knew Paul Hymowitz prior to February 1937, that in February 1937 his sister was married to Paul Hymowitz. Late in March 1937 Paul Hymowitz was committed to 3066 Rikers Island and a few days subsequent to his admittance Mrs. Paul Hymowitz called her brother, Sam Rich, and asked him for advice regarding carrying on of the business conducted by Paul Hymowitz at 346 Bowery, New York City, New York. Mr. Rich told her he would come over to the store, look over the stock as to its value and then determine what to do. A day or two later, that is in March 1937, Sam Rich, his brother Charles Rich, Mrs. Paul Hymowitz, Mrs. Hymowitz the mother of Paul Hymowitz, and a brother of Paul Hymowitz, met at the store at about noon. A detailed and itemized inventory was taken and the prices

were secured from the bills. Sam Rich wrote down the 3067
items and prices and later extended and totaled them and he now says that the grand total was about $1800.00 at cost. They worked on the inventory until about 7 P. M., and about that time the brother of Mr. Hymowitz, who had left some time earlier, returned with the attorney Robert Hoffman who questioned Mr. Sam Rich as to the value of the stock and what he would pay for it. Mr. Sam Rich gave the original hand written inventory to Mr. Hoffman and showed him the total was about $1800.00 at cost and he further told him he would pay between $1100.00 and $1200.00 for the stock and fixtures because that is all it was worth. 3068
He Told Mr. Hoffman that a good part of the stock was winter stock and was worth considerably less at that time of the year and then again some of the stock was shop worn. Mr. Hoffman was then given the keys to the store and when they all departed he also took with him the Inventory and said he would advise Mr. Sam Rich of his decision as to what he was going to do with the matter. He never communicated with Mr. Sam Rich and the other members of Mr. Rich's family.

I, Sam Rich, have had more than 20 years of experience in the men's furnishings field and am fully aware of the values of such merchandise. I have also bought and sold 3069
hundreds of such stocks of merchandise in bulk and otherwise. I reside at 2460 Davidson Ave., Bronx, N. Y.

Sam Rich

Sworn to before me this
1st day of July, 1940.

Philip R. Cohen
PHILIP R. COHEN, NOTARY PUBLIC
Queens County Clerk's No. 385
New York County Clerk's No. 516
Kings County Clerk's No. 174
Commission Expires March 30, 1943

Defendants' Exhibit B.

3070 **FINAL ACCOUNTING ASSIGNMENT PROCEEDINGS**

INCOME.

Amount received from auctioneer	$1,219.35	
Relief tickets	200.00	
Sundry items	7.32	
		$1,426.67

PREFERRED CREDITORS.

Sales tax—New York City	$ 308.46	
3071 Business tax—New York City	15.31	
Rent (Assignee in possession)	450.00	473.77
		$ 952.90

ADMINISTRATION EXPENSES.

Assignee's expenses	$ 104.44	
Assignee's expenses (prospective)	2.00	106.44
		$ 846.46

TO FEES.

3072

Assignee's commissions	$ 88.19
Attorney for Assignee—Robert Hoffman	300.00
	$ 388.19

TO CREDITORS.

Total amount due	2,729.73	
Total amount received	17%	458.27
		$ 846.46

Defendants' Exhibit C.

3073

Telephone CAnal 6-3781

ABR. STRINGER & JACK MICHAELS
Auctioneers and Appraisers
57 Walker Street
New York

May 28, 1940

In April 1937, I was called up by Jacob P. Shulman to appraise and bid on an army and navy stock on the Bowery. With Phil Stringer, I went to that store, examined 3074
the stock and fixtures and told Mr. Shulman that we would pay $1000—top, for that stock. Mr. Shulman tried to have us give a higher offer but we told him that it was not worth more than $1000—and that we could not go higher.

Jack Michaels

3075

Defendants' Exhibit D.

3076

SUPREME COURT.

NEW YORK COUNTY.

In the Matter of the General Assignment for the Benefit of Creditors of

PAUL HYMOWITZ,

Assignor,

—to—

SAMUEL S. KOLMAN,

3077

Assignee.

The undersigned, a creditor herein, does hereby consent to the entry of an order, vacating and dismissing the general assignment for the benefit of creditors, heretofore executed by PAUL HYMOWITZ, and all proceedings taken thereon, and further providing for the discharge of the assignee and the cancellation of his bond.

NAME OF CREDITOR	ADDRESS	AMOUNT
3078 Riback & Mantis	17 Orchard St.	$117.76

BY Samuel Mantis .....

Defendants' Exhibit D.

State of
County of —ss.: 3079

On this....day of....., 1937, before me personally came .....6, to me known, who being by me duly sworn, did depose and say that he resides in.....; that he is the.....of ....., the corporation described in and which executed the above instrument, that he knows the seal of said corporation; that the seal affixed said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order. 3080

.....
Notary Public

State of
County of —ss.:

On this....day of....., 1937, before me personally came....., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same. 3081

.....
Notary Public

Defendants' Exhibit E.

3082 April 1st, 1937.

Mr. Harry Levy
122 West Broadway
New York City

RE: PAUL HYMOWITZ

Dear Sir:

Enclosed herewith is a proof of claim which you will please be good enough to sign and return to us.

Very truly yours,

GOLDMAN, MALTER & GOLDMAN
BY

3083 TG:EC
ENC.

April 1st, 1937.

Robert Hoffman, Esq.
1270 Broadway
New York City

RE: PAUL HYMOWITZ

Dear Sir:

Please be good enough to mark your records that we
3084 represent Harry Levy of 122 West Broadway, New York City, who is a creditor in the above matter in the sum of $260.82.

Very truly yours,

GOLDMAN, MALTER & GOLDMAN
BY

TG:EC
1253

Defendants' Exhibit F,

PHOTOSTATIC COPY OF SIGNATURES.

(Opposite) ☞

9/10

10/11 } Schwartz, J.

11/12 }

U.S. District Courts
S.D. of N.Y.

CRIME INV.

9133

11/

1/2 }

2/3 } Rehack, Mantis D.P. v. Sard

3/4 } Falkenbury v. [illegible]

4/5

5

Defendants' Exhibit G.

3088 Re: United States v. Samuel Kandell, et al.

Approved: Morris E. Spector
Assistant United States Attorney

Before: Honorable Garrett W. Cotter,
United States Commissioner for the Southern District of New York

Complaint: Violation of Section 52 (b), Title 11, U. S. Code; Section 88, Title 18, U. S. Code.

3089 UNITED STATES OF AMERICA

v.

AARON KREISELMAN, SAM RIBACH, ABRAHAM SCHWARTZ, SAMUEL KANDELL and PHILIP COHEN,

Defendants.

Southern District of New York:

LEONARD L. JUSKOW, being duly sworn, deposes and says: that he is a Special Agent of the Federal Bureau of
3090 Investigation, United States Department of Justice, and upon information and belief alleges and charges as follows:

That heretofore, to wit, on or about the 25th day of March, 1937, at the Southern District of New York, Aaron Kreiselman, Sam Ribach, Abraham Schwartz, Samuel Kandell and Philip Cohen, the defendants herein, unlawfully, wilfully and knowingly conspired, confederated and agreed together and with each other and with divers other persons, to commit an offense against the United States, that is to say, to violate Section 52 (b) of Title 11, U. S. Code.

Defendants' Exhibit G.

OVER ACT

That in pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York and within the jurisdiction of this Court, Aaron Kreiselman, Sam Ribach, Abraham Schwartz, Samuel Kandell and Philip Cohen, the defendants herein, on or about the 25th day of March, 1937, met at the offices of the Dry Goods & Furnishings Association, 175 Fifth Avenue, New York, New York.

Against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided (Title 11, Section 52 (b), U. S. Code; Title 18, Section 88, U. S. Code).

The sources of deponent's information, and the grounds for his belief, are investigations made by him in the course of his official duties.

WHEREFORE, deponent prays that a warrant may issue for the apprehension of the above-named defendants, and that they may be arrested and imprisoned or bailed as the case may be.

Leonard L. Juskow

Sworn to before me this
23rd day of April, 1938.

Garrett Cotter
United States Commissioner
Southern District of New York

Defendants' Exhibit G.

3094 Separate warrants to apprehend were issued joining Samuel Kandell & Philip Cohen, Aaron Kreiselman, Sam Ribach and Abraham Schwartz.

C13-479
#50066

The following notation appeared on the first warrant:

Kandell

Defendant waives examination held to await the action of the Grand Jury.

Bail $500.00

3095 Dated, New York, April 25, 1938

Garrett W. Cotter
United States Commissioner, Southern District of New York

Cohen dismissed
on motion Spector
4/25/38

Garrett W. Cotter
United States Commissioner, Southern District of New York

3096 Received this warrant the 23rd day of April, 1938 at New York City and executed same by arresting the within named Samuel Kandell at New York City on the 25th day of April, 1938 and have his body now in Court as within commanded.

John J. Kelly
United States Marshal.
Southern District of New York

The body of the warrant contained the following:

Samuel Kandell and Philip Cohen "conspired to forbear to act in a bankruptcy proceeding, in violation of Section 88, Title 18, U. S. Code, and Section 52 (b), Title 11, U. S. Code.

Defendants' Exhibit G.

FINAL COMMITMENT 3097

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES

vs.

SAMUEL KANDELL

charged with violation of

Sec. 52 (b) Title 11 U. S. C.

Sec. 88 " 18 U. S. C. 3098

Vio. Bankruptcy Act

Defendant duly arraigned before me 4/25 1938, and, after having been informed of the charge against and right to aid of counsel, waived examination, it is

Ordered that said defendant be held to answer to the charge and any order of the court and that bail be fixed in the sum of $500 and that he be committed to the custody of the United States Marshal for the Southern District of New York, and by said Marshal duly delivered to the 3099 custody of the Warden of the Federal Detention Head-

Defendants' Exhibit G.

3100 quarters in the Borough of Manhattan, City of New York, until such bail be given.

Dated, New York, N. Y., 4/25 1938.

Garrett W. Cotter
United States Commissioner for the
Southern District of New York.

Defendant having given bail, it is ordered that he be
3101 released from custody.

Dated, New York, N. Y., 4/25 1938.

Garrett W. Cotter
United States Commissioner for the
Southern District of New York

C13-479

3102

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3103

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN

Name and address of appellant: Martin M. Goldman, 765 Eastern Parkway, Brooklyn, New York.

3104

Name and address of appellant's attorney: Harold H. Corbin, 15 Broad Street, New York City.

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b) (5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel.

3105

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

MARTIN M. GOLDMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3106

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of the United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3107

GROUNDS O APPEAL.

(1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant-appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed
3108 to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

(4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objec-

3109

tions and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in violation of the Constitutional rights of the defendants and that it was not obtained in violaion of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the 3110
defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses 3111
as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3112

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain
3113 transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

(13) The Court erred in denying the request of counsel for defendant-appellant, to inspect certain notes of one Turner, a witness for the Government, which notes pur-
3114 ported to contain memoranda of the aforesaid alleged conversations and portions of such alleged conversations of the defendants and others claimed to have been overheard as aforesaid, despite the fact that the said witness, Turner, testified that his said notations or memoranda varied from the transcripts of the said alleged conversations and portions of such alleged conversations introduced into evidence by the Government as aforestated.

(14) The Court erred in denying the request of counsel for the defendant-appellant to have marked for identification a certain document from which counsel for the Govern-

3115

ment read in cross-examining a witness for the defendant-appellant, to wit, Samuel I. Kandell, and in refusing permission to defendant-appellant's counsel to inspect the said document, to all of which exception was duly taken by counsel for the defendant-appellant.

(15) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof 3116
established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the witnesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(16) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by 3117
counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(17) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and Statutes in such case made and provided.

(18) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of the assignment of errors to be hereinafter filed.

Notice of Appeal and Grounds of Appeal—Appellant Martin M. Goldman.

3118

(19) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

MARTIN M. GOLDMAN,
Appellant.

To:

HON. JOHN T. CAHILL,
3119 United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3120

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3121

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

THEODORE GOLDMAN

Name and address of appellant: Theodore Goldman, 1245 Eastern Parkway, Brooklyn, New York.

3122

Name and address of appellant's attorney: Harold H. Corbin, 15 Broad Street, New York City.

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b)(5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel.

3123

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

THEODORE GOLDMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3124

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3125

GROUNDS OF APPEAL.

(1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed
3126 to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

(4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

3127

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objections and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in violation of the Constitutional rights of the defendants and that it was not obtained in violaion of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

3128

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

3129

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3130

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain
3131 transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

(13) The Court erred in denying the request of counsel for defendant-appellant, to inspect certain notes of one Turner, a witness for the Government, which notes pur-
3132 ported to contain memoranda of the aforesaid alleged conversations and portions of such alleged conversations of the defendants and others claimed to have been overheard as aforesaid, despite the fact that the said witness, Turner, testified that his said notations or memoranda varied from the transcripts of the said alleged conversations and portions of such alleged conversations introduced into evidence by the Government as aforestated.

(14) The Court erred in denying the request of counsel for the defendant-appellant to have marked for identification a certain document from which counsel for the Govern-

3133

ment read in cross-examining a witness for the defendant-appellant, to wit, Samuel I. Kandell, and in refusing permission to defendant-appellant's counsel to inspect the said document, to all of which exception was duly taken by counsel for the defendant-appellant.

(15) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof 3134
established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the witnesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(16) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by 3135
counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(17) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and Statutes in such case made and provided.

Notice of Appeal and Grounds of Appeal—Appellant Theodore Goldman.

3136

(18) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of the assignment of errors to be hereinafter filed.

(19) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

THEODORE GOLDMAN,
Appellant.

3137

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

3138

Notice of Appeal and Grounds of Appeal—Appellant Jacob P. Shulman.

3139

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SHULMAN

Name and address of appellant: Jacob P. Shulman.

Name and address of appellant's attorneys: Phillips, Mahoney & Fielding, 51 Chambers Street, New York City. 3140

Offense: Unlawfully conspiring to act and forebear to act in bankruptcy proceedings in violation of Section 88 Title 18 United States Code; conspiring to violate 29(b) (5) of the National Bankruptcy Act.

Date of judgment: July 26th, 1940.

Brief description of judgment or sentence: Eighteen (18) months and fined $25.00. Payment of fine remitted. Bail fixed at $1000.00 pending appeal. Paroled to July 29th, 1940 in custody of counsel to give bail.

Name of prison where now confined if not on bail: Appellant is now at liberty paroled in custody of his counsel. 3141

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule 5 of the Supreme Court rules I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated, July 29th, 1940.

JACOB P. SHULMAN,
Appellant.

Notice of Appeal and Grounds of Appeal—Appellant Jacob P. Shulman.

3142

To:

HON. JOHN T. CAHILL,
United States Attorney.

HON. GEORGE J. FOLLMER,
Clerk of the United States District Court.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

GROUNDS OF APPEAL.

3143 (1) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, to which ruling of the Court an exception was duly taken by the defendant-appellant.

(2) The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

(3) The Court erred in denying the motion made at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, to which ruling of the Court an exception was duly taken.

3144 (4) The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven nor that it could be the subject of prosecution, to which ruling an exception was duly noted.

(5) The Court erred in admitting into evidence incompetent, irrelevant and immaterial testimony over the objections and exceptions of counsel for the defendant-appellant, which objections were urged at the time of its submission.

(6) The Court erred in ruling upon a hearing preliminary to the trial that certain evidence was not obtained in

3145

violation of the Constitutional rights of the defendants and that it was not obtained in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(7) The Court erred in admitting into evidence certain stenographic notes and transcripts of alleged conversations and portions of alleged conversations between certain of the defendants and others and in permitting testimony to be adduced by the Government with regard to the subject of such conversations and the contents of such stenographic notes and transcripts in the face of proof upon the trial and upon the preliminary hearing establishing that said evidence 3146
was obtained by illegal means in violation of the Constitutional rights of the defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code ("Communications Act of 1934").

(8) The Court erred in admitting into evidence against the defendant-appellant the testimony of certain witnesses as to conversations and acts of persons other than defendant-appellant not in his presence or with his knowledge, and certain exhibits purporting to record conversations of, or statements made by, persons other than the defendant-appellant, not in the presence of defendant-appellant and 3147
without his knowledge, over the objection and exception of the defendant-appellant.

(9) The Court erred in deciding questions of law arising during the course of the trial.

(10) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial on all of the grounds provided by law.

(11) The Court erred in certain of its rulings as to the admissibility of evidence during the course of the trial of the action, to which exception was duly taken by counsel for the defendant-appellant.

(12) The Court erred in permitting the jury to take with

3148 it to the jury room during the course of its deliberations certain exhibits introduced in evidence, to wit, certain transcripts of alleged conversations and portions of alleged conversations of the defendants and others claimed to have been overheard by Special Agents of the Federal Bureau of Investigation of the United States Government although the same were illegally obtained as aforesaid and although the same contained certain irrelevant and collateral matter prejudicial to defendant-appellant and not admitted in evidence.

3149 (13) The Court erred in admitting into evidence against the defendants the said stenographic notes and transcripts and in permitting witnesses for the Government to testify as to certain alleged conversations and portions of alleged conversations between certain of the defendants and others overheard as aforesaid, despite the fact that the proof established that the mechanical means through which such alleged conversations are claimed to have been heard only permitted the hearing of excerpts from, and snatches of, such alleged conversations and although the proof established that to a substantial degree the said conversations and statements claimed so to have been heard by the wit-

3150 nesses for the Government were inaudible, distorted, unintelligible, incomplete and garbled.

(14) The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, among other grounds, because of certain improper statements made by counsel for the Government during the course of the trial and in his summation to the jury, to which exception was duly noted.

(15) Other prejudicial and reversible errors were committed as appear in the transcript of the testimony on the trial and the record of proceedings had herein to which more specific reference will be made in the assignments of error to be filed hereinafter pursuant to the Rules and

3151

Statutes in such case made and provided.

(16) The Court erred in refusing to admit into evidence certain memorandum made by the witness Kandell, which said memorandum was made by Kandell at the time of a certain alleged meeting of creditors, the denial of said admission being prejudicial to the interests of this defendant-appellant.

(17) The foregoing grounds of appeal are not intended and shall not be construed in any way to limit or define the scope of two assignment of errors to be hereinafter filed.

3152

(18) The defendant herein reserves the right to file other and additional grounds of appeal.

Dated, July 29, 1940.

JACOB P. SHULMAN,
Appellant.

To:

HON. JOHN T. CAHILL,
United States Attorney.

3153

HON. GEORGE J. FOLLMER,
Clerk of United States District Court,
Southern District of New York.

CLERK OF THE CIRCUIT COURT OF APPEALS,
Second Circuit.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3154

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL

3155

Now come defendants-appellants Martin M. Goldman and Theodore Goldman, and each, for himself, for his Assignment of Errors on the appeal duly taken by him from the judgment of conviction rendered July 26th, 1940, respectfully show:

1. The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, on the ground that the verdict was contrary to law, contrary to the evidence, and contrary to the weight of the evidence.

2. The Court erred in entering judgment against each of

3156

these defendants upon the verdict of the jury in this case.

3. The Court erred in denying the motion made on behalf of each of these defendants at the end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against such defendants.

4. The Court erred in denying the motion made on behalf of each of these defendants at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against such defendants and upon the ground that the crime alleged in the indictment had not been proven.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3157

5. The Court erred in denying the motion of each of these defendants preliminary to trial to suppress evidence obtained by Special Agents of the Federal Bureau of Investigation of the United States Government on April 7th, 14th, 21st and 26th, all in the year 1937, and in making the following findings of fact and in arriving at the following conclusions of law in connection with the issues presented by the said motion to suppress;

A. That the detectaphone placed outside of the wall separating the office of defendant-appellant Schulman from the adjoining room was installed lawfully and not in violation of the constitutional rights of defendants-appellants. 3158

B. That the evidence of conversations overheard by the Special Agents of the Federal Bureau of Investigation by means of the said device was admissible and competent and should not be suppressed and that admission of such evidence did not violate the defendants' constitutional or statutory rights.

C. That the unlawful entry into the office of defendant-appellant Schulman on the night of April 6th, 1937, did not aid the said Special Agents of the Federal Bureau of Investigation in attaching the device to the said wall on April 7th, 1937 or in obtaining evidence by means thereof. 3159

D. That if the conversations heard over the said listening device were relevant to the issues in the above case, the same would be admissible as testimony upon the trial of the said action and that the objections of defendants-appellants to the said testimony upon the trial on the ground of invasion of their constitutional rights and violation of the laws and statutes of the United States of America would not be well taken and would be overruled.

E. "I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the

3160

wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509."

6. Upon the Preliminary Hearing, viz: the motion to suppress evidence alleged to have been illegally obtained, the Court erred in denying the request of counsel for each
3161 of these defendants to inspect certain pencil notes made by Harold O. Schroeder, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Schroeder (marked Petitioner's Exhibits 2 and 3 for Identification).

7. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for each of these defendants to inspect certain pencil notes made by Harold P. Turner, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Turner (marked Petitioner's Exhibit 5 for
3162 Identification).

8. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for each of these defendants to inspect certain pencil notes made by Sidney S. Rubenstein, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Rubenstein.

9. The Court erred on said Preliminary Hearing in sustaining the objection of the Government to the production, pursuant to the request of counsel for each of these defendants, of correspondence between Harold P. Turner, Special Agent of the Federal Bureau of Investigation, called by

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3163

the Government as a witness and the United States Attorney for the Southern District of New York, and in making the following ruling:

"The Court: Well, I don't think those letters will be competent or that they can throw any light on it or that they will be required, so I will sustain the objection."

10. The Court erred in excluding competent evidence offered by defendants and in admitting incompetent, irrelevant and immaterial testimony over the objection and exception of counsel for defendants as follows: 3164

(Upon cross-examination of Robert Hoffman, witness in behalf of the Government:)

"Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question: Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that?

Mr. Walsh: I object to the form of the question. That is a question for the jury to decide from the evidence elicited throughout the whole trial. 3165

The Court: I sustain the objection.

Mr. Corbin: I respectfully except."

* * * * * *

"Q. Tell me, you knew it was a perfectly proper request? A. A proper request it was.

Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen.

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it, but if it becomes irresponsive I will not.

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

(Continued.)

A. I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved, and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception."

* * * * * *

"Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes, I sustain the objection.

Mr. Fielding: Exception."

* * * * *

(Upon Redirect Examination of Gabriel Wishbow, Witness on Behalf of the Government:)

"Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: 'The deponent has read the affidavit of Robert

3169

Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishings Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of 3170
Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis.

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on the same day?

Mr. Corbin: Now just a moment. I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from 3171
which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and 'phoned for him to come over so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

172 Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

Q. Well, will you answer the question that I have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there

173 on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared, read the affidavit which was prepared by Mr. Hoffman and in which you said that you corroborated everything that was said by Mr. Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

174 Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him as I understand the question, if that is so. If it is not, he can so state. Of course, if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer.

3175

A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did."

* * * * *

(Upon cross-examination of Harold P. Turner, witness in behalf of the Government:)

"Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time; you knew, did you not, when you went in there, and when I say 'there' I mean Schulman's private office, you were doing an illegal act?

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Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night you were doing so without right?

3177

Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes. Objection sustained.

Mr. Corbin: I respectfully except."

* * * * *

(Upon direct examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

3178

Mr. Corbin: The same objection.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did."

* * * * *

(Upon cross examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, 3179 in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. Objection sustained.

Mr. Corbin: Exception."

* * * * *

(On direct examination of defendant Martin M. Goldman:)

3180 "Q. Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect 'We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10-bill'. Did you have any such thought in your mind?

Mr. Walsh: I object to the form of the question.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3181

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking him for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

The Court: You have been asking leading questions repeatedly, and I have sustained the objection. 3182

Mr. Corbin: Exception, your Honor."

11. The Court erred in admitting the testimony on behalf of the Government of Nathaniel Bodinger, Harold P. Turner and Sidney S. Rubenstein, Special Agents of the Federal Bureau of Investigation wherein they testified to conversations between the defendant Schulman and Robert Hoffman and others at said Schulman's private office, and to conversations of said defendant Schulman over the telephone in his private office, all in violation of the Constitutional rights of defendants and in violation of Sections 151 and 605 of Title 47 of the United States Code (Communications Act of 1934). 3183

12. The Court erred in admitting into evidence the transcribed notes of Nathaniel Bodinger, stenotypist in the employ of the United States Government, as a Special Agent of the Federal Bureau of Investigation, which notes were taken by the said witness of conversations between Schulman and others intercepted by the said witness, although the said transcriptions constituted only fragmentary portions of the said conversations and incomplete and garbled versions of the said conversations to such an extent as to

3184 render it impossible to ascertain the true context, meaning and purport of the said conversations.

13. The Court erred in deciding questions of law arising during the course of the trial, to wit:

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendants-appellants to examine certain pencil notes and a memorandum dictated by Harold P. Turner, a witness for the Government, which notes and memorandum were made at the time, and immediately after, the occasions when the said witness listened in on conversations taking place in the 3185 private office of the defendant Schulman in April, 1937; the said witness Turner having refreshed his recollection by referring to said notes and memorandum prior to his taking the witness stand, and the said witness having admitted that there were possible variations between his notes and memorandum and those of the witness Nathan Bodinger, the stenotypist in the employ of the Government who testified in minute detail as to the conversations overheard by him as aforesaid.

* * * * * *

The Court erred in sustaining the objection of counsel 3186 for the Government to the request of counsel for defendants-appellants to inspect the notes made by Sidney S. Rubenstein, a witness for the Government, at the time he listened in on the said conversations in the private office of the defendant Schulman in April, 1937, although the said witness admitted that he had no recollection of said conversations and hence had refreshed his recollection from his said notes before taking the witness stand.

* * * * * *

The Court erred in granting the motion of counsel for the Government to admit as against each and all of the

3187

defendants-appellants all the conversations, of the defendants-appellants testified to upon the trial, whether or not made in the presence of each other, and the Court further erred in ruling that such conversations were admissible as against each and all of the defendants-appellants because, as the Court ruled, a conspiracy on the part of the defendants-appellants had been proven by the Government.

* * * * *

The Court erred in denying the request of counsel for defendants-appellants to examine and to have marked for identification a paper or document from which counsel for the Government read in the presence of the Court and the Jury in cross-examining Samuel I. Kandell, a witness called by defendants-appellants.

3188

14. The Court erred in refusing in its charge to give the following instructions requested by each of these defendants:

> "The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded.
>
> Insofar as the defendant Martin Goldman was present at any meeting in Schulman's office where such devices were used by Government agents to detect the conversation, his right to privacy was equally infringed.
>
> Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded."

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Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

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15. The Court erred in admitting in evidence each of the following Government's exhibits, viz., 18, 18a, 19, 19a, 20 and 20a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

16. The defendant Martin M. Goldman further assigns as error the admission in evidence against him of Government's Exhibits 21 and 21a, except so much of said exhibits as is contained on pages 5 to 16 of exhibit 21a purporting to report a conversation in the presence of said Martin M. Goldman, and further, in admitting in evidence any testi-
3191 mony concerning the conversations purporting to be reported in said exhibits other than the conversation purported to have been had in his presence.

17. The defendant Theodore Goldman assigns as error the admission in evidence against him of Government's exhibits 21 and 21a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

And the said defendant Theodore Goldman further assigns as error the admission against him of testimony of the witnesses Nathaniel Bodinger, Harold P. Turner and
3192 Sidney S. Rubenstein wherein they testified to conversations purporting to have been had on April 7, 1937 between the defendants Schulman, Hoffman and Martin M. Goldman.

Assignment of Errors of Defendants-Appellants Martin M. Goldman and Theodore Goldman.

3193

WHEREFORE, said defendants-appellants, Martin M. Goldman and Theodore Goldman, for the errors aforestated, pray that said judgment of conviction be reversed.

Dated, New York, October 14th, 1940.

HAROLD H. CORBIN,
Attorney for Defendant-Appellant,
Martin M. Goldman,
Office & P. O. Address,
15 Broad Street,
Borough of Manhattan,
City of New York.

3194

MARTIN CONBOY,
Attorney for Defendant-Appellant,
Theodore Goldman,
Office & P. O. Address,
39 Broadway,
Borough of Manhattan,
City of New York.

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Assignment of Errors of Defendant-Appellant Jacob P. Shulman.

3196

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SHULMAN

3197 NOW COMES defendant-appellant Jacob P. Shulman, and for his Assignment of Errors on the appeal duly taken by him from the judgment of conviction rendered July 26th, 1940, respectfully shows:

1. The Court erred in denying the motion to set aside the verdict of the jury and for a new trial, on the ground that the verdict was contrary to law, contrary to the evidence, and contrary to the weight of the evidence.

2. The Court erred in entering judgment against the defendant-appellant upon the verdict of the jury in this case.

3. The Court erred in denying the motion made at the
3198 end of the Government's affirmative case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant.

4. The Court erred in denying the motion made at the close of the entire case to dismiss the indictment upon the ground that the Government had failed to prove a case against the defendant-appellant, and upon the ground that the crime alleged in the indictment had not been proven.

5. The Court erred in denying the motion of counsel for defendant-appellant preliminary to trial to suppress evidence obtained by Special Agents of the Federal Bureau of Investigation of the United States Government on April

7th, 14th, 21st and 26th, all in the year 1937, and in making the following findings of fact and in arriving at the following conclusions of law in connection with the issues presented by the said motion to suppress:

A. That the detectaphone placed outside of the wall separating the office of defendant-appellant Shulman from the adjoining room was installed lawfully and not in violation of the constitutional rights of defendant-appellant.

B. That the evidence of conversations overheard by the Special Agents of the Federal Bureau of Investigation by means of the said device was admissible and competent and should not be suppressed, and that admission of such evidence did not violate the defendant's constitutional and statutory rights.

C. That the unlawful entry into the office of defendant-appellant Shulman on the night of April 6th, 1937, did not aid the said Special Agents of the Federal Bureau of Investigation in attaching the device to the said wall on April 7th, 1937 or in obtaining evidence by means thereof.

D. That if the conversations heard over the said listening device were relevant to the issues in the above case, the same would be admissible as testimony upon the trial of the said action and that the objections of defendant-appellant as to the said testimony upon the trial on the ground of invasion of their constitutional rights and violation of the laws and statutes of the United States of America would not be well taken and would be overruled.

E. "I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was

3202 obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509."

6. Upon the Preliminary Hearing, viz.: the motion to suppress evidence alleged to have been illegally obtained, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Harold O. Schroeder, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Schroeder (marked 3203 Petitioner's Exhibits 2 and 3 for Identification).

7. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Harold P. Turner, then a Special Agent of the Federal Bureau of Investigation, and certain typewritten notes prepared therefrom by the said Turner (marked Petitioner's Exhibit 5 for Identification).

8. Upon the said Preliminary Hearing, the Court erred in denying the request of counsel for defendant-appellant to inspect certain pencil notes made by Sidney S. Rubenstein, then a Special Agent of the Federal Bureau of In- 3204 vestigation and certain typewritten notes prepared therefrom by the said Rubenstein.

9. The Court erred on said Preliminary Hearing in sustaining the objection of the Government to the production, pursuant to the request of counsel for each of these defendants, of correspondence between Harold P. Turner, Special Agent of the Federal Bureau of Investigation, called by the Government as a witness and the United States Attorney for the Southern District of New York, and in making the following ruling:

> "The Court: Well, I don't think those letters will be competent or that they can throw any light

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on it or that they will be required, so I will sustain the objection."

10. The Court erred in excluding competent evidence offered by defendant-appellant and in admitting incompetent, irrelevant and immaterial testimony over the objection and exception of counsel for defendant-appellant, as follows:

(Upon cross examination of Robert Hoffman witness in behalf of the Government:)

"Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question. Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that?

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Mr. Walsh: I object to the form of the question. That is a question for the jury to decide from the evidence elicited throughout the whole trial.

The Court: I sustain the objection.

Mr. Corbin: I respectfully except."

* * * * *

"Q. Tell me, you knew it was a perfectly proper request? A. A proper request it was.

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Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen—

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it, but if it becomes irresponsive I will not.

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

(Continued.)

A. I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved, and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception."

* * * * * *

"Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes, I sustain the objection.

Mr. Fielding: Exception."

* * * * *

(Upon Redirect Examination of Gabriel Wishbow, Witness on Behalf of the Government:)

"Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: 'The deponent has read the affidavit of Robert Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishings Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate

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same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis.

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on the same day?

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Mr. Corbin: Now just a moment, I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and 'phoned for him to come over so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

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The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

Q. Well, will you answer the question that I

3214

have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared; read the affidavit which was prepared by Mr. Hoffman and

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in which you said that you corroborated everything that was said by Mr. Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him, as I understand the question, if that is so. If it is not, he can so state. Of course, if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer.

3216

A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did."

* * * * *

3217

(Upon cross examination of Harold P. Turner, witness in behalf of the Government:)

"Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time: you knew, did you not, when you went in there, and when I say 'there' I mean Schulman's private office, you were doing an illegal act?

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

3218

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night you were doing so without right?

Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes, objection sustained.

Mr. Corbin: I respectfully except."

* * * * * *

3219

(Upon direct examination of Sidney S. Rubenstein, witness in behalf of the Government:)

"Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

Mr. Corbin: The same objection.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did".

* * * * * *

(Upon cross examination of Sidney S. Rubenstein, witness in behalf of the Government:)

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"Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. Objection sustained.

3221

Mr. Corbin: Exception."

(On direct examination of defendant Martin M. Goldman:)

"Did you have any thought in your mind at that time that you could go to Schwartz, or any of the other creditors, and say to him in effect 'We are going to get one price for the stock, but we are going to keep that a secret from the rest of the creditors, and we are only going to divide among you creditors a smaller amount, and in order that you keep your mouths shut about it I will give you a $10-bill. Did you have any such thought in your mind?

3222

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: Exception.

Q. Did you have any thought or belief that Schwartz or any of the other creditors would be susceptible to such a proposition?

Mr. Walsh: I object to that.

The Court: Yes. You are leading the witness.

Mr. Corbin: I am asking him for his intent, Judge.

Mr. Walsh: You didn't ask him, though.

3223

The Court: You have been asking leading questions repeatedly, and I have sustained the objection.

Mr. Corbin: Exception, your Honor."

11. The Court erred in admitting the testimony on behalf of the Government of Nathaniel Bodinger, Harold P. Turner and Sidney S. Rubenstein, Special Agents of the Federal Bureau of Investigation, wherein they testified to conversations between the defendant Martin M. Goldman, defendant-appellant and Robert Hoffman and others at defendant-appellant's private office, and to conversations of defendant-appellant over the telephone in his private office, all in violation of the Constitutional rights of defendant-appellant and in violation of Sections 151 and 605 of Title 47 of the United States Code (Communications Act of 1934).

3224

12. The Court erred in admitting into evidence the transcribed notes of Nathaniel Bodinger, stenotypist in the employ of the United States Government, as a Special Agent of the Federal Bureau of Investigation, which notes were taken by the said witness of conversations between defendant-appellant and others intercepted by the said witness, although the said transcriptions constituted only fragmentary portions of the said conversations and incomplete and garbled versions of the said conversations to such an extent as to render it impossible to ascertain the true context, meaning and purport of the said conversations.

3225

13. The Court erred in deciding questions of law arising during the course of the trial, to wit:

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendant-appellant to examine certain pencil notes and a memorandum dictated by Harold P. Turner, a witness for the Government, which notes and memorandum were made at

3226 the time, and immediately after, the occasions when the said witness listened in on conversations taking place in the private office of the defendant-appellant in April, 1937; the said witness Turner having refreshed his recollection by referring to said notes and memorandum prior to his taking the witness stand, and the said witness having admitted that there were possible variations between his notes and memorandum and those of the witness Nathan Bodinger, the stenotypist in the employ of the Government who testified in minute detail as to the conversations overheard by him aforesaid.

3227 * * * * * *

The Court erred in sustaining the objection of counsel for the Government to the request of counsel for defendant-appellant to inspect the notes made by Sidney S. Rubenstein, a witness for the Government, at the time he listened in on the said conversations in the private office of the defendant-appellant in April, 1937, although the said witness admitted that he had no recollection of said conversations and hence had refreshed his recollection from his said notes before taking the witness stand.

* * * * * *

3228 The Court erred in granting the motion of counsel for the Government to admit as against each and all of the defendants-appellants all the conversations of the defendants-appellants testified to upon the trial, whether or not made in the presence of each other, and the Court further erred in ruling that such conversations were admissible as against each and all of the defendants-appellants because, as the Court ruled, a conspiracy on the part of the defendants-appellants had been proven by the Government.

* * * * * *

Assignment of Errors of Defendant-Appellant Jacob P. Shulman.

3229

The Court erred in denying the request of counsel for defendant-appellant to examine and to have marked for identification a paper or document from which counsel for the Government read in the presence of the Court and the Jury in cross-examining Samuel I. Kandell, a witness called by defendant-appellant.

14. The Court erred in refusing in its charge to give the following instructions requested by the defendant-appellant:

"The placing of a hearing device against the outer wall of Schulman's office was likewise an invasion of his constitutional rights and any evidence thereby obtained must be disregarded. 3230

That the alleged conspiracy to set aside a secret fund out of the estate assets of $400 was inaugurated on March 25, 1937 at a meeting of creditors which Jacob Shulman did not attend and who could have had no knowledge of it at that time.

That the fixation of any listening device and the accompanying apparatus on the outside wall of Shulman's office by which conversations in Shulman's office could be heard and recorded without his knowledge and consent was an invasion of the constitutional rights of Shulman. Evidence thus obtained should be disregarded. 3231

Insofar as any hearing device was used to listen to conversations, or parts thereof, taking place over Schulman's telephone, the act of listening was illegal and any evidence directly or indirectly obtained against any party to such telephone conversation must be disregarded."

15. The Court erred in admitting in evidence each of the following Government's exhibits, viz.: 18, 18a, 19, 19a,

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20 and 20a, and further in admitting in evidence any testimony concerning the conversations purporting to be reported in said exhibits.

16. Prejudicial and irremediable error was inadvertently committed by counsel for the United States Government in furnishing to the Jury during its deliberations certain incompetent, irrelevant and damaging evidence which the Court had excluded upon the trial but which was physically a part of Government's Exhibits 18A, 19A, 20A and 21A, and which should have been elided therefrom before permitting inspection of same by the Jury.

3233

WHEREFORE, said defendant-appellant, Jacob P. Shulman, for the errors aforestated, prays that said judgment of conviction be reversed.

Dated, New York, October 15th, 1940.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Defendant-Appellant,
Jacob P. Shulman,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
New York City.

3234

Order Extending Time to October 15, 1940.

At a stated term of the United States District Court, held in and for the Southern District of New York, on the 19th day of August, 1940. 32

Present: HON. GASTON L. PORTERIE, *Justice.*

UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, JACOB P. SHULMAN and THEODORE GOLDMAN,

Defendants. 323

This court having, in the absence of the trial judge in the above matter, summoned to appear before it the attorneys for the defendants herein and the United States Attorney for the Southern District of New York, with a view to giving directions for the filing of the assignment of errors and bill of exceptions in connection with the appeal herein, and the parties having duly appeared, and after having heard Bruno Schackner, Esq., of counsel for the United States; Warren C. Fielding, Esq., of counsel for the defendant, Jacob P. Shulman, and Edward J. Bennett, Esq., of counsel for the defendants, Martin M. Goldman and Theodore Goldman, and due deliberation having been had thereon, and upon agreement of the respective counsel, it is 323

ORDERED that the time of the defendants herein to file their assignments of error and to settle and file the bill of exceptions herein be, and the same hereby is, extended to and including the 15th day of October, 1940.

G. L. PORTERIE.
U. S. D. J.

Order Extending Time to October 18, 1940.

3238

At a Stated Term of the United States Circuit Court of Appeals, held in and for the Second Circuit on the 14th day of October, 1940.

Present: HON. HARRIE B. CHASE, *Circuit Judge.*

UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN, et al.,

3239 Defendants.

Upon the annexed affidavit of Edward J. Bennett, verified October 14, 1940, and the stipulation of counsel hereto annexed, it is

ORDERED that the time of the defendants herein to file their assignments of error and to settle and file their bill of exceptions herein be and the same hereby is extended to and including the 18th day of October, 1940, and that the term of court be similarly extended for such purpose.

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HARRIE B. CHASE,
U. S. C. J.

Order Extending Time to October 25, 1940.

UNITED STATES CIRCUIT COURT OF APPEALS, 3241

FOR THE SECOND CIRCUIT.

C-107-2.

UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Appellants. 3242

IT IS HEREBY STIPULATED, subject to the approval of the Court, that the time of the appellants to settle and file their bill of exceptions herein be extended to and including October 25, 1940.

Dated, October 17, 1940.

JOHN T. CAHILL B. S. (sgd),
United States Attorney.

3243

HAROLD H. CORBIN (sgd),
Attorney for Martin M. Goldman.

MARTIN CONBOY (sgd),
Attorney for Theodore Goldman.

W. C. FIELDING (sgd),
Attorney for Jacob P. Schulman.

SO ORDERED.

HARRIE B. CHASE,
U. S. C. J.

Stipulation as to Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS,

3244 FOR THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Appellants.

IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between the United States Attorney for the Southern Dis-
3245 trict of New York and the attorneys for the appellants that the printing of the following exhibits used upon the trial of the above entitled cause be, and the same hereby is waived, and the said exhibits may be presented by either side on the argument of the appeal herein with like force and effect as though physically reproduced in the Record herein:

Gov. Ex. A for Ident.—Engine Room Log Book of 277 Broadway.

Gov. Ex. B for Ident.—Frost's affidavits of April 4, 1940 and May 10, 1940.

3246 Pet. Ex. 2 for Ident.—Typewritten notes of Harold O. Schroeder on white paper used to refresh his recollection.

Pet. Ex. 3 for Ident.—Pencil notes on yellow paper used by Schroeder to refresh his recollection.

Pet. Ex. 4 for Ident.—Turner's pencil notes.

Pet. Ex. 5 for Ident.—Notes of Harold P. Turner, typewritten.

Gov. Ex. 2—Entire file of Assign. Proceedings of Paul Hymowitz to Samuel S. Kolman except Notice of retainer of Hoffman by Kolman, petition and order for provisional bond, petition and order to show cause (pp. 251-253 of Min.).

Stipulation as to Exhibits.

Gov. Ex. 3—File in Hymowitz Bankr. Proceedings, except Involuntary petition, petition and order staying sale, note of issue, affidavit of Hoffman and notice of motion to dismiss, and order dismissing. 3247

Gov. Ex. 16 for Ident.—Unsigned affidavits prepared by Hoffman April 3, 1937.

Gov. Ex. 17 for Ident.—Unsigned affidavits of Kolman, Hoffman and Wishbow prepared by Hoffman April 3, 1937.

Gov. Ex. 18, 19, 20 and 21—Bodinger's notes of April 26, 21, 14 and 7, 1937.

Gov. Ex. 18a, 19a, 20a and 21a—Transcripts of Bodinger, April 26, 21, 14 and 7, 1937.

Gov. Ex. 23 for Ident.—Order to show cause in bankruptcy of First 88 Cents Stores, Inc. 3248

Gov. Ex. 24 for Ident.—Page 80 of Grand Jury Minutes, Testimony of Theodore Goldman.

Gov. Ex. 25 for Ident.—Entire transcript of testimony of Theodore Goldman before Grand Jury.

Gov. Ex. 26 for Ident.—3 newspaper notices produced from Kandell's file (pg. 922, Steno. Min.).

Provided however that this stipulation shall not confer upon appellants the right to inspect any exhibits which the appellants had no right to inspect in the absence of this stipulation. 3249

Dated, New York, October 17, 1940.

JOHN T. CAHILL,
U. S. Attorney for Southern District of New York.

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

So Ordered this day of October, 1940.

Stipulation as to Bill of Exceptions.

250 UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

251 IT IS HEREBY STIPULATED by and between the parties hereto that the foregoing bill of exceptions is correct, in every particular, that together with the exhibits to be submitted to the Circuit Court of Appeals upon the argument of the appeals herein, it contains all the evidence in the cause and that it may be duly signed, settled and allowed as the bill of exceptions of the defendants by any judge of this Court.

Dated, October 18, 1940.

JOHN T. CAHILL,
252 United States Attorney for the
Southern District of New York.

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

Order Settling Bill of Exceptions.

3253

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3254

This is to certify that the foregoing bill of exceptions, tendered by the defendants herein, is correct in every particular; that together with the exhibits to be submitted to the Circuit Court of Appeals upon the argument of the appeal herein, it contains all the evidence in this cause, and that said exhibits not printed herein are hereby made part of this bill of exceptions, which is hereby signed, settled, allowed and made a part of the record in this cause as the bill of exceptions of the defendants.

Dated, October 18, 1940.

3255

U. S. D. J.

Stipulation as to Contents of Record.

3256

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3257

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a direct transcript of the record of the United States District Court for the Southern District of New York, in the above entitled matter, as agreed upon by the parties hereto.

Dated, October 18, 1940.

JOHN T. CAHILL,
United States Attorney for the
Southern District of New York.

3258

HAROLD H. CORBIN,
Attorney for Appellant Martin M. Goldman.

MARTIN CONBOY,
Attorney for Appellant Theodore Goldman.

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Appellant Jacob P. Schulman.

Clerk's Certificate.

3259

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, et al.,

Defendants.

3260

I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States, for the Southern District of New York, DO HEREBY CERTIFY that the foregoing is a true transcript of the record of the said District Court in the above entitled action, as agreed upon by stipulation between the attorneys for the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said court to be hereunto affixed at the City of New York, in the Southern District of New York, this day of October, in the year of our Lord one thousand nine hundred and forty and of the Independence of the United States, one hundred and sixty-four.

3261

GEORGE J. H. FOLLMER,
Clerk.

(Seal)

[fol. 1088] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA

vs.

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and Samuel Irving Kandell

It is Hereby Stipulated and Consented that Martin Conboy, Esq., of No. 39 Broadway, in the Borough of Manhattan, City of New York, be substituted as attorney for the defendant-appellant Theodore Goldman in the place and stead of Harold H. Corbin, Esq.

Dated October 14, 1940.

Theodore Goldman, Defendant-Appellant. Harold H. Corbin, Attorney for Theodore Goldman, Defendant-Appellant.

STATE OF NEW YORK,
County of New York, ss:

On this 14th day of October, 1940, before me personally came Theodore Goldman to me known and known to me to be the person described in and who executed the above consent and he duly acknowledged to me that he executed the same.

Mae J. Cannon, Notary Public, Kings County. Kings Co. Clerk's No. 53, Register's No. 2070 New York Co., Clerk's No. 28, Reg. No. 18901892. Commission expires March 30, 1942.

So Ordered.

D. E. Roberts, Clerk. (Seal.)

October 14, 1940.

[fol. 1089] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1940

No. 177

Argued January 13, 1941. Decided March 10, 1941

UNITED STATES OF AMERICA, Appellee,

against

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

Appeal from a Judgment of the District Court for the Southern District of New York. Affirmed

Before Swan, Chase and Clark, Circuit Judges

[fol. 1090] John T. Cahill, U. S. Attorney, for Appellee; Bruno Schachner and John C. Walsh, Asst. U. S. Attorneys, of Counsel.

Harold H. Corbin, Attorney for Martin M. Goldman; Edward J. Bennett, and Francis B. Delehanty, Jr., of Counsel.

Martin Conboy, Attorney for Theodore Goldman; Martin Conboy, and David Ash, of Counsel.

Phillips, Mahoney & Fielding, Attorneys for Defendant Schulman; Warren C. Fielding, of Counsel.

CHASE, Circuit Judge:

The appellants were indicted in the Southern District of New York, for conspiring, contrary to the provisions of 18 U. S. C. A. Sec. 88, to commit an offense against the United States by receiving or attempting to obtain money for acting or forbearing to act in a bankruptcy proceeding in violation of 11 U. S. C. A. Sec. 52(b). After trial by jury in that court, they were all convicted and sentenced. This appeal followed.

The appellants seek reversal of the judgment on the ground that error was committed in denying their motion to dismiss and later to set aside the verdict for insufficiency of the evidence; and also rely upon errors in the denial of

a motion to suppress evidence; in the introduction of evidence; and the denial of a motion to inspect memoranda made by witnesses for the government.

The evidence was clearly sufficient to make a prima facie case as follows:

One Hymowitz, who was the proprietor of a small dry-goods store on the Bowery in New York City, was convicted [fol. 1091] of some offense relating to the use or possession of relief tickets issued by the City of New York and was imprisoned. His mother and sister engaged Robert Hoffman, an attorney and distant relative, to undertake to settle his business affairs with his creditors. They both had claims against Hymowitz for loans made him but were willing to waive them to further an effort to settle in a way sufficiently satisfactory to the merchandise creditors to enable Hymowitz to go back into business when he had served his sentence.

Hoffman saw Hymowitz in prison and obtained his signature to a general assignment for the benefit of creditors, dated March 22, 1937, under which one Kolman, a lawyer associated with Hoffman, was the assignee. Hoffman then was retained by the assignee and the assignment proceedings were begun in the state court. A letter was sent to all creditors explaining the financial situation of Hymowitz. It was estimated, as thereir stated, from information obtained from him and from a appraisal that the cost of his stock in trade was from $2 '00.00 to $2500.00; that there were Emergency Relief Bur u Vouchers on which about $250 could be realized and that "the City is also indebted to Paul Hymowitz in the further sum of approximately Two hundred dollars in connection with other relief vouchers." The liabilities were given as about $2500.00 and the cooperation of creditors was asked in aid of a stated "purpose to see that a thorough and proper administration is had and that creditors shall realize as close to one hundred per cent of their claims as possible."

The assignee engaged an auctioneer and made arrangements to hold a public sale of the property at the store of the assignor on April 5, 1937, after due notice given.

That sale was never held, however, because the appellants acted in concert to prevent it in the following way: Martin M. Goldman, who was a partner in the law firm of Goldman, [fol. 1092] Malter and Goldman in New York City and in which his brother Theodore Goldman another appellant was

a partner, arranged with Hoffman in behalf of a creditor who was a client of his firm for a meeting of creditors on the afternoon of March 25, 1937 at the offices of the Dry Goods & Furnishings Association of which one Kandell, a defendant whose motion to dismiss was granted, was in charge.

At about one o'clock on that afternoon and before the meeting of creditors was to be held Theodore Goldman and Kandell called at the office of Hoffman where they met him and one Wishbow, the auctioneer who was to conduct the sale for the assignee, and proposed that blank forms they had brought along be executed to make Kandell a co-assignee and retain Goldman as co-attorney for the assignees. Hoffman was unwilling to consent though pressed to do so to avoid the possibility of the assignment proceedings being made abortive by the filing of an involuntary petition in bankruptcy and to make everything go smoother as creditors might feel that Hoffman and the assignee were too closely connected with the debtor to represent them adequately. Hoffman explained that it was a small matter which needed no additional attorney or assignee and persisted in his refusal.

The meeting of the creditors was held later that afternoon with some present; some represented by Kandell; and some by Martin M. Goldman. Hoffman explained the situation and asked the creditors to cooperate. Goldman advocated a private bulk sale of the goods and apparently all but Hoffman and Wishbow agreed. During the meeting Hoffman and Wishbow were asked to withdraw while further discussion was had and while they were in another room Martin M. Goldman joined them and told them that he would like to make some money out of it; that he could arrange to have [fol. 1093] a buyer, either he or Kandell would obtain, purchase the goods in bulk at private sale who would pay enough to allow for a 40% settlement with creditors and for some expenses and in addition some $400.00 to be kept secret and divided among Kandell, Goldman and Hoffman. Hoffman did not agree and when he suggested to Goldman that the creditors at the meeting would not accept a settlement at such a percentage Goldman said they would each get ten dollars to "shut their mouths."

This proposal to Hoffman, not being accepted, Martin M. Goldman, Theodore Goldman and Schulman decided that an involuntary petition in bankruptcy should be filed and

the proposed sale by the assignee stayed. Theodore Goldman then prepared an involuntary petition using a blank form and making only general allegations of acts of bankruptcy which left the petition demurrable and subject to dismissal, if no motion to amend was made, merely upon motion without notice to creditors other than those petitioning. Schulman was made the attorney of record for the petitioning creditors.

A stay of the assignee's sale was obtained ex parte and served upon Hoffman on the morning of April 5th, the day the sale was to be held. He moved to vacate the stay but his motion was denied after a hearing the same morning before the district judge who issued the stay order, Schulman having appeared with creditors in opposition. After the hearing Hoffman went to the office of a referee in bankruptcy and told the referee what he thought the defendants were trying to do. The referee called in a representative of the Federal Bureau of Investigation to whom Hoffman explained the situation and thereafter Hoffman acted under the instructions of the Bureau. He pretended to be willing to "do business" with Schulman and at a meeting on April 7, 1937 in Schulman's office at which Martin M. Goldman was present the matter was discussed. Mean-[fol. 1093] while the Federal Bureau of Investigation had been informed of the time and place of that meeting and had been permitted by the custodian of the building to enter Schulman's office without his knowledge and to install a dictaphone with an outlet in an adjoining vacant room. Representatives of the Bureau were in that adjoining room to record the conversation at the meeting of Schulman, Martin M. Goldman and Hoffman, but the dictaphone didn't work and they were able to get only such fragments of the talk as could be heard through a detectaphone they placed against the side of the wall separating the room they were in from Schulman's office and which was wholly inside the room they were in. This was an instrument in no way connected with the dictaphone above mentioned.

At this meeting Martin M. Goldman took Hoffman to task for his attitude at the hearing before the district judge on the motion to vacate the stay and denied that he had made any improper proposal regarding the disposition of the proceeds of a bulk sale which he insisted was best for creditors. Schulman, attempting to bring Goldman and Hoffman

to a better understanding, took the ground that Hoffman's inexperience in such matters accounted for his attitude and the situation was discussed at some length without a definite agreement. At this point Goldman left Schulman's office and Schulman followed him outside. After a little while Schulman came back and told Hoffman that Goldman was afraid to speak before him but that he would carry out whatever Schulman and Hoffman "agreed upon or arranged." Thereupon, Hoffman pretended to asquiesce reluctantly to Schulman's plan to sell the goods in bulk to a buyer who would pay enough to settle with creditors on a 40% basis; leave a small amount for expenses and provide about $400.00 to be kept secret and divided among Schulman, the Goldmans and Hoffman after some disclosed expenses had been paid. After Hoffman left, Schulman was [fol. 1095] heard by the government agents in a conversation with someone over the telephone to say in part, "I'm in a positi n now, I control * * *. Between you and me, he wanted to give creditors 80 cents on the dollar, so there was no room for the boys. So we dumped in on it. Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer, that wanted to give him eighteen hundred to two thousand, you understand? Now Goldy even said it would bring sixteen hundred. Goldman is smart. He says he'd bring twelve hundred and sixteen hundred understand? So figuring when he told me somebody had raised it to two thousand and wanted to give it to him at the figure, I figured Goldman would get thirty-three hundred for it, but as it is now take another look and tell me. You don't have to. If we can get a few dollars for ourselves—the result is three * * *."

Schulman and Hoffman conferred several times afterwards and came to an apparent understanding about the bulk sale, and reached the point where Hoffman on April 26th delivered to Schulman a bill of sale of the goods from Hymowitz to one L. Wein in which the consideration was stated to be $1200.00 and no mention was made of the relief tickets.

Meanwhile Theodore Goldman prepared a motion to dismiss the petition in bankruptcy which he had drawn and Schulman had filed as attorney for the petitioning creditors and sent it to Hoffman. Hoffman signed it as attorney for the bankrupt and the petition was dismissed on that motion on May 14, 1937 without opposition.

On May 19, 1937, Theodore Goldman sent Hoffman a copy of the order of dismissal of the bankruptcy petition, and three papers which he asked Hoffman to have Hymowitz sign and then return. One was a bill of sale of the goods from Hymowitz to A. Rothhein for the stated price of $1500.00. Another was a letter from Hymowitz to Goldman, [fol. 1096] Malter & Goldman authorizing them to make the sale when the general assignment proceedings were dismissed and to use the proceeds "together with the monies due me from the City of New York" to pay all creditors 40% of their claims except the City Sales Tax Bureau which was to be paid in full and then to "pay all administration expenses, legal fees and disbursements in connection with the bankruptcy proceedings and the assignment for the benefit of creditors." The letter renounced all claim of Hymowitz to any "portion of this money" and authorized Kohman "to turn over to you any monies in his possession as assignee to be used for the purposes hereinabove mentioned." And the third was an assignment from Hymowitz to Goldman, Malter and Goldman of all sums due or to become due the former "in connection with Emergency Relief Bureau Vouchers, issued by the City of New York, and or the Emergency Relief Bureau, which vouchers were heretofore turned over to Paul Hymowitz."

Steps were also taken to get the consent of creditors to the proposed settlement but the whole plan was frustrated by the refusal of a creditor to give a release in full for the percentage offered. This creditor took legal action which did away with the proposed bulk sale and resulted in a sale of the goods at auction by an auctioneer named by that creditor. The proceeds of that sale were all properly applied but the result was a much smaller percentage paid on claims than had previously been contemplated.

On such evidence it was clearly for the jury to decide whether the appellants had acted in good faith as they claimed solely for the best interests of the creditors or whether they had fraudulently planned to compel Hoffman under threat of the bankruptcy proceedings to let them control the situation; create a secret fund and divide that in violation of the statute as the government's evidence and especially that of Hoffman, would prove if believed and we [fol. 1097] must now take it for granted that it was believed by the jury. There was, accordingly, ample proof of the conspiracy and the evidence connecting the appellants in the

scheme was plainly adequate. Tomplain v. United States, 42 F. (2d) 202. What Schulman said and did in furtherance of the conspiracy was competent evidence not only against himself but against the others and admissible as to them in the exercise of a sound discretion by the trial court. Wiborg v. United States, 163 U. S. 532; Delaney v. United States, 263 U. S. 586; Cluine v. United States, 159 U. S. 590.

Nor was any error committed in denying Schulman's motion, in which the Goldmans did not join, to suppress the evidence obtained by government agents by the use of the detectaphone and allowing it to be introduced at the trial. Nothing was obtained as a result of any secret entry of Schulman's office. No trespass upon his premises in any way helped to obtain the evidence. The situation was legally no different from the use of an amplifier of sound to overhear conversation not otherwise audible to the listener as, for instance, the use of a common aid to hearing by a person somewhat deaf. No communication by wire or radio was intercepted to make applicable the provisions of Sec. 605 of the Communications Act of 1934 (c. 652, 48 Stat. 1064, 1103; 47 U. S. C. A. Sec. 605) as construed in Nordone v. United States, 308 U. S. 338. There was only an instance of eavesdropping which alone, though an invasion of privacy, is not a violation of a recognized legal right to privacy. Conspirators who discuss their unlawful schemes must take the risk of being overheard and the risk of having what is overheard used against them provided there is otherwise no trespass by the listener or violation of a statutory right to use a means of communication thus made immune from interception. Olmstead v. United States, 277 U. S. 438. Compare, United States v. Feldman, 104 F. (2d) 255; and Smith v. United States, 2 F. (2d) 715. [Vol. 1098] Federal agents who testified had made minutes of occurrences concerning which they gave evidence and had read over their minutes in preparing to testify at the hearing on the motion to suppress evidence. None of them used such notes to refresh his memory when on the stand either at the preliminary hearing or at the trial. A motion by appellants for the delivery to them of such notes for inspection was denied both at the hearing on the motion and at the trial and exceptions were taken. Memoranda actually used by a witness when testifying may be examined by opposing counsel if a request so to do is made.

Morris v. United States, 149 F. 123, 126. Where an attorney has made use of grand jury minutes in the examination of a witness the court may, nevertheless, in the exercise of a sound discretion deny a request of opposing counsel to inspect them. U. S. v. Socony-Vacuum Oil Co., 310 U. S. 150, 233-234. Where the witness neither uses memoranda when testifying nor use of it is made by counsel in his examination there is ordinarily no danger, and there certainly was none here, that the witness when on the stand will either be imposed upon in that respect or receive any improper communication or that there are hidden circumstances which might detract from the weight of his testimony of which opposing counsel should be made aware and given the opportunity to expose. The reasons underlying the rule permitting inspection not being applicable, it was not error to deny the appellants' motion. Lennon v. United States, 20 F. (2d) 490; Mullaney v. United States, 82 F. (2d) 638; C. W. Hull Co. v. Marquette Cement Mfg. Co., 208 Fed. 260.

No other grounds for reversal have been advanced which are of sufficient merit to require discussion.

Judgment affirmed.

[fol. 1106] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of March one thousand nine hundred and forty-one.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase, Hon. Charles E. Clark, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants, and Samuel Irving Kandall, Defendant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. Roberts, Clerk.

[fol. 1107] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America v. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman and Samuel Irving Kandell. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 26, 1941. D. E. Roberts, Clerk.

[fol. 1108] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1105] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

vs.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

Before Swan, Chase and Clark, Circuit Judges

PETITION FOR REHEARING

Theodore Goldman, Petitioner; Martin Conboy, of Counsel.

Per CURIAM:

Petition for rehearing denied.

T. W. S. H. B. C. C. E. C.

Apr. 18, 1941. C. J. J.

A true Copy.
D. E. Roberts, Clerk.

[fol. 1106] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America, Appellee, vs. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman, Defendants-Appellants, and Samuel Irving Kandell, Defendant. Opinion. Petition for Rehearing. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 18, 1941. D. E. Roberts, Clerk.

[fol. 1107] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United

States Courthouse in the City of New York, on the 18th day of April, one thousand nine hundred and forty-one.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase, Hon. Charles E. Clark, Circuit Judges

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN, Defendants-Appellants,

and

SAMUEL IRVING KANDELL, Defendant

A petition for a rehearing having been filed herein by counsel for the appellant, Theodore Goldman,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

D. E. Roberts, Clerk.

A true copy.

D. E. Roberts, Clerk. (Seal.)

[fol. 1108] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America v. Martin M. Goldman, Theodore Goldman and Jacob P. Schulman. Order. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 18, 1941. D. E. Roberts, Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 962

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 963

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 980

ORDER GRANTING REHEARING AND CERTIORARI—October 20, 1941

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.